

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WELLOGIX, INC.	*	3:08-CV-119
	*	Houston, Texas
VS.	*	
	*	May 10, 2011
ACCENTURE, LLP	*	9:09 a.m.

JURY TRIAL

DAY 2 - MORNING SESSION

BEFORE THE HONORABLE KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

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1 PROCEEDINGS

2 May 10, 2011

3 (Jury not present.)

4 THE COURT: Okay. We'll go on the record. We did  
09:09:44 5 find the missing juror. He, apparently, misunderstood some  
6 directions and apologized for leaving a few minutes early; but  
7 he's with us. And Mrs. Loewe has sworn him in.

8 Does anybody want him sworn in on the record?

9 MS. BOYCE: No.

09:10:00 10 MR. LAMINACK: How far did he get before somebody  
11 caught him?

12 THE COURT: All the way home.

13 MR. LAMINACK: What did he say, out of curiosity?

14 THE COURT: Mrs. Loewe can tell us better about it  
09:10:07 15 than I could.

16 JUDICIAL ASSISTANT: He just said that he  
17 misunderstood and he went home, and he lives very close to  
18 downtown so he was already relaxed. He was very, very  
19 apologetic, though.

09:10:21 20 MR. LAMINACK: Was he thrilled?

21 JUDICIAL ASSISTANT: He was. I told him he had a  
22 lucky seat with his name on it.

23 MR. VOYLES: Sorry, your Honor. We were trying to  
24 reach agreement on some exhibits.

09:10:31 25 THE COURT: Yeah, that's fine. That's fine.

1 Do you have something for me? I was going to  
2 turn to yesterday's issues; but if you have something new for  
3 me, we can take that up first, if you'd like.

4 MR. VOYLES: Yesterday's issues being the arbitration?

09:10:43

5 THE COURT: Whether or not that -- yeah, the witness,  
6 Mr. Stephens, his testimony could be used from the arbitration.

7 MS. MARTINES: Good morning, your Honor.

8 Pursuant to the Court's suggestion, I contacted  
9 Mr. Stephens last night. He is arriving late Friday night, the  
10 20th, and can be here the first thing, Monday morning, the 23rd,  
11 to testify live.

09:11:07

12 THE COURT: Great.

13 MS. MARTINES: So I hope that -- and we'll withdraw  
14 the arbitration testimony request.

09:11:18

15 MR. VOYLES: From our perspective, your Honor, we  
16 don't have anything to respond to there, obviously. If they  
17 call him live, they call him live, provided the case is still  
18 proceeding at that point in time.

19 MS. MARTINES: Well, obviously, we're going to request  
20 to call him out of order.

09:11:31

21 THE COURT: I see. That's fine.

22 MR. VOYLES: We'll have to deal with that when it  
23 comes up.

24 THE COURT: Well, my predilection -- strong  
25 predilection is people be allowed to testify out of turn if

09:11:40

1 they're really unavailable, not if it's some kind of secondary  
2 agenda. But if he's unavailable, I think I have to be  
3 open-minded about the timing of the testimony.

4 All right. Now, we just got these objections and  
09:11:58 5 counter-designations from Accenture vis-à-vis Wellogix'  
6 testimony, the deposition designations, as we say. I guess at  
7 some point we need to sit down and go over these. I'm not going  
8 to get them ruled on today. I need to, I guess, look at each  
9 passage.

09:12:17 10 MR. VOYLES: Your Honor, those relate to arbitration  
11 testimony, I believe.

12 THE COURT: They're your objections.

13 MR. VOYLES: Yes.

14 MS. RODRIGUEZ: Your Honor, those were some that we  
09:12:24 15 had to designate with respect to BP witnesses in light of the  
16 Court's overruling of Accenture's Limine Point Number 1. What I  
17 would propose, your Honor, is that we address these depositions  
18 as they come up. For example, Ms. Monteau will be the first  
19 one, and we're prepared to address that with the Court.

09:12:43 20 THE COURT: Okay.

21 MS. RODRIGUEZ: Thank you, your Honor.

22 THE COURT: Anything else we need to take up? I'm not  
23 encouraging it.

24 MR. PIRTLE: Your Honor, Tom Pirtle for the  
09:12:52 25 Plaintiffs.

1 THE COURT: Yes, sir.

2 MR. PIRTLE: We do need to take up a few documents  
3 that I'm going to use in opening. We've agreed to about over  
4 half of them.

09:12:59 5 THE COURT: Okay.

6 MR. PIRTLE: There's two issues. And one issue is  
7 going to center around this limine on the patent issue, and I  
8 have a series of document that go through that, and the other  
9 issue is an objection to hearsay within hearsay. They're not  
09:13:16 10 certainly business record objections, but there's some hearsay  
11 within the documents.

12 THE COURT: Okay.

13 MR. PIRTLE: Oh, and also, they're going to bring a  
14 form objection to some exhibits as having to be precluded  
09:13:35 15 because of the arbitration findings arbitration. And I will  
16 agree that they don't have to object to those exhibits every  
17 time I use them to preserve their preclusion objection.

18 THE COURT: Okay. You're wanting -- this has been an  
19 interesting experience because each of you want some things from  
09:13:59 20 the arbitration in and some things from the arbitration out,  
21 right?

22 MR. PIRTLE: I don't care to have any of it in. I  
23 think it's confidential by its terms.

24 THE COURT: But you made them available to Accenture,  
09:14:14 25 right? You made the transcripts available?

1 MR. LAMINACK: Right. This is just a form issue.  
2 Because you overruled the motion in limine, they still want to  
3 preserve their objection on certain documents that they claim  
4 relate solely to some of the issues at the arbitration.

09:14:30

5 And because you overruled their limine, they  
6 still want to preserve their error by making the objection; and  
7 we're just agreeing that they don't need to stand up every time  
8 and make that objection.

09:14:43

9 THE COURT: That's certainly agreeable to me. That's  
10 certainly agreeable to me.

11 MR. VOYLES: If I may, your Honor?

12 THE COURT: Yes, sir.

09:14:52

13 MR. VOYLES: What we need just to preserve error -- I  
14 think what we've agreed on is a definitive ruling from this  
15 Court under 103(a) that definitively rules that our objection to  
16 all exhibits and testimony on the ground of issue preclusion  
17 relieves us of the necessity of repeating our objection every  
18 time the same or similar evidence is introduced through exhibits  
19 or testimony, whether through this witness or any other --

09:15:10

20 excuse me, whether through opening statement or -- or throughout  
21 the trial and whether by live testimony or deposition testimony.

22 THE COURT: Mr. Pirtle, I thought you didn't want any  
23 of it in. You're now saying some of it you do want it?

09:15:26

24 MR. PIRTLE: I'm sorry, he's trying to eliminate  
25 documents out of the --



1 THE COURT: Yeah, yeah.

2 I mean, you want them in?

3 MR. PIRTLE: I want these documents in, yes. I was  
4 talking about the proceedings themselves. This case is  
09:15:35 5 different than that case.

6 THE COURT: I understand that it is. I understand  
7 that it is.

8 MR. VOYLES: Our only issue is, your Honor, we  
9 understand your ruling and we'll abide by it with respect to our  
09:15:43 10 motion in limine.

11 THE COURT: Yeah.

12 MR. VOYLES: We just don't want to have to stand up --

13 THE COURT: I understand that. And I already said  
14 that's certainly agreeable to me. That's certainly agreeable to  
09:15:49 15 me.

16 MR. PIRTLE: For purposes of the record, documents  
17 subject to that -- and I've got them in different folders.

18 THE COURT: All right.

19 MR. PIRTLE: Plaintiff's Exhibit 56, 813, 120, and  
09:16:03 20 851.

21 Plaintiff's Exhibit 985 comes in without  
22 objection.

23 Plaintiff's Exhibit 473 comes in without  
24 objection.

09:16:21 25 Plaintiff's Exhibit 480, 476, 478, 493, 433, nine

1 -- well, sorry, I'm in the -- 433 come in with a preclusion  
2 objection.

3 904 starts the series of documents that there's  
4 an objection of hearsay within hearsay, I think.

09:16:48 5 And this document is a business record of both  
6 Accenture and BP, and it relates -- I checked with Victor on the  
7 process team. They reviewed eTrans documents on SharePoint and  
8 don't have any questions at this time.

9 THE COURT: Okay. Now, are you -- do we have an issue  
09:17:14 10 we need to confront on the hearsay within the hearsay?

11 MR. VOYLES: Yes, your Honor.

12 MR. PIRTLE: I don't think we do. I'm offering it to  
13 show that they had had access to SharePoint. And Victor is an  
14 employee of Accenture. He was the one that was making the  
09:17:32 15 templates so it would be an admission of a party opponent which  
16 also meets the hearsay exception.

17 THE COURT: You-all want to respond to that,  
18 Mr. Voyles?

19 MR. VOYLES: Yes, your Honor. Give me one moment.

09:17:59 20 Do you mind if I use yours?

21 Your Honor, this document also contains at its  
22 beginning an e-mail between representatives of BP. And that's  
23 the hearsay portion of the e-mail that we object to.

24 MR. PIRTLE: I do not plan, during the course of this  
09:18:20 25 opening statement, to use that portion and will assume we can

1 address it later.

2 THE COURT: What's your ultimate position, though,  
3 that it's not offered for the truth of the matter asserted?

4 MR. PIRTLE: Certainly not now. It's not offered for  
09:18:35 5 the truth.

6 THE COURT: Well -- so it's a document from BP to  
7 whom?

8 MR. PIRTLE: This is relaying a conversation from Jay  
9 Pierce who is an employee of Accenture. This will probably fall  
09:18:55 10 under an admission of a party opponent, also.

11 MR. VOYLES: That's not an admission of a party  
12 opponent when someone from BP is making a statement to someone  
13 else from BP about what somebody from Accenture said. That's  
14 not an admission of ours.

09:19:09 15 MR. PIRTLE: Well, there was a conversation that he  
16 had had with Jay Pierce relayed in this e-mail. We clear the  
17 first hearsay rule under business record and then the hearsay  
18 within hearsay I say admission of a party opponent.

19 THE COURT: But is the party opponent you're talking  
09:19:23 20 about BP?

21 MR. PIRTLE: No. It's Accenture. Jay Pierce is an  
22 employee of Accenture and was in charge of the BP program at  
23 Accenture -- I mean at BP.

24 MR. VOYLES: First and foremost, your Honor m,they  
09:19:34 25 don't clear the business record exception because they've not

1 established that that e-mail falls within the business record  
2 exception. And secondly, a BP person reporting something that  
3 an Accenture person might have said is not an admission of  
4 Accenture.

09:19:53 5 THE COURT: The Accenture -- you agree the Accenture  
6 statement comes in if there are no other hearsay hurdles, right?

7 MR. VOYLES: I agree that the earlier portions of the  
8 e-mail that are statements by Accenture do come in. And we have  
9 no objection to that. It's -- it's other portions of the e-mail  
09:20:11 10 that are statements by BP representatives to each other, whether  
11 they're about Accenture or not.

12 MR. LAMINACK: May I make a comment, Judge?

13 THE COURT: Yes, sir.

14 MR. LAMINACK: This is going to be true with several  
09:20:28 15 of these BP documents that we want to admit where BP is talking  
16 to each other. The important thing we're trying to establish is  
17 not necessarily the truth of the matter asserted in those  
18 conversations but that that was what BP was saying at the time.  
19 A lot of our case hinges around --

09:20:43 20 THE COURT: So it's about what the state of play was  
21 between BP and other critical parties?

22 MR. LAMINACK: Correct. At the time. And what BP was  
23 saying. Not the truth of the matter but that's what they were  
24 saying at the time. That's what's important.

09:20:58 25 MR. VOYLES: What they're saying at the time is

1 hearsay.

2 MR. LAMINACK: We're not offering it for the truth,  
3 only that it was said.

4 THE COURT: I mean --

09:21:07 5 MR. VOYLES: It is classic hearsay.

6 THE COURT: Well, I think it may not be, though. If I  
7 were to say today to somebody coming into Houston the weather is  
8 going to be near freezing and he packs accordingly and gets here  
9 and finds out he has all the wrong clothes, that would be a  
09:21:27 10 statement being offered not for the truth but for the fact that  
11 our visitor relied upon it. And as I understand what they're  
12 saying, that's the nature of this statement.

13 MR. VOYLES: Your Honor, I don't -- he was talking  
14 generally, first of all. With respect to this particular  
09:21:45 15 statement, I don't think that's the nature of the statement at  
16 all. It depends on the document.

17 THE COURT: Well, can you hand Mrs. Loewe the  
18 document.

19 MR. VOYLES: If you're not going to use --

09:22:02 20 MR. PIRTLE: I'm not going to use the back.

21 MR. VOYLES: Your Honor, we may be arguing about  
22 something here that they say they're not even going to use.

23 MR. PIRTLE: I'm not going to be using that back part  
24 of the document.

09:22:10 25 THE COURT: All right, all right.

1 MR. LAMINACK: Just pull it off.

2 MR. VOYLES: That's fine.

3 THE COURT: Okay, all right. That's fine.

4 MR. PIRTLE: I did say early on.

09:22:21 5 494 --

6 MR. VOYLES: Could I try something real quick?

7 THE COURT: Yes, sir. Yes, sir.

8 MR. VOYLES: Just for the record, we've agreed on

9 these out there so I just want to make sure we're clear; and

09:22:33 10 they're in a different order than what's in your folders there.

11 With respect to Exhibits 56, 120, 210, 476, 478, 480, and 813,

12 our only objection is the issue preclusion objection; and we

13 understand --

14 THE COURT: You're preserving it for the record. It

09:22:51 15 is preserved for the record. It shall be available for argument

16 before the 5th Circuit and the Supreme Court. It's preserved

17 for all purposes.

18 MR. VOYLES: Thank you, sir.

19 With respect to 433, 469, 493, 851, and 904, we

09:23:07 20 have that same objection which you've ruled on.

21 THE COURT: Same ruling.

22 MR. VOYLES: But also hearsay objection with respect

23 to those. And we've been through, I guess, 904.

24 MR. PIRTLE: Is 494 not on there?

09:23:25 25 MR. VOYLES: You didn't tell me about 494.

1 THE COURT: Are we still talking about what's going to  
2 be used in opening statement?

3 MR. PIRTLE: Yes. And then 469.

4 MR. VOYLES: Okay. With respect to 494 and with  
09:23:37 5 respect to 469, we have hearsay objections.

6 MR. PIRTLE: All right. As to 494, this is relaying  
7 congratulations -- this is a BP memo which is relaying  
8 congratulations to the P2P team of which Accenture folks were  
9 members; and it talks about the team has visited the site,  
09:24:01 10 SharePoint, felt it was well organized and learned a great deal.  
11 And this is -- this is Mr. David Barnes relaying what I would  
12 call a present sense impression of his perception of the team;  
13 and he was --

14 THE COURT: Well, but is that it or is he just -- is  
09:24:21 15 he just -- as Mr. Laminack said, offering thoughts as to what  
16 everybody's apprehension at the time was, however faulty.

17 MR. PIRTLE: Either/or. I'll go with either way. I  
18 mean, this is just him saying his observations. There is really  
19 no quote here from anybody.

09:24:39 20 MR. VOYLES: Your Honor, this is a BP person who --  
21 they're offering this one for the truth. They're offering it  
22 for the truth of what is described in the document, that this  
23 actually happened, that these etransfer meetings occurred and  
24 that information was exchanged. There's no other reason for  
09:24:57 25 them to offer it.

1 THE COURT: But is there any disagreement that these  
2 meetings occurred?

3 MR. VOYLES: Is there any disagreement that the  
4 meetings occurred?

09:25:02 5 THE COURT: Yeah.

6 MR. VOYLES: No disagreement that the meetings  
7 occurred.

8 THE COURT: Well, that's not going to hurt anybody  
9 then if the -- if we admit a statement that says they occurred.  
09:25:13 10 Now, I know we're slicing it very thin, but I think a large part  
11 of Wellogix' case hinges on the fact that they were going to be  
12 included, they were going to be included, they were going to be  
13 included, they shared freely their information, and then they  
14 weren't included. I think that's right, and I think this  
09:25:33 15 document tends to that point.

16 I'm not sure -- you think of it for the truth of  
17 the matter, that the P2P was then working fine. I'm not even  
18 sure that's good for Wellogix' case. It might actually suggest  
19 that things were falling into line just as they should be  
09:25:59 20 without -- without a contract with Wellogix. I'm going to allow  
21 it.

22 MR. PIRTLE: Last one on this subject is 469. And if  
23 there's anything in the body of it, I'm -- all I'm going to read  
24 is the subject line on this one, at least for opening, which is  
09:26:16 25 titled etransfer of knowledge.



1 THE COURT: Okay. What's the issue on that?

2 MR. VOYLES: Same objection you just ruled on, your  
3 Honor.

4 THE COURT: That's fine. Same ruling.

09:26:28 5 MR. PIRTLE: The rest of these are okay.

6 THE COURT: Let's -- I really would like to start on  
7 time this first day so let's --

8 MR. PIRTLE: The other issue altogether has to do with  
9 a big part of what Ms. Martines was arguing, which is the patent  
09:26:44 10 issue. There are documents within here that are -- that I need  
11 to use that talk about the state of mind of Accenture and their  
12 knowledge that they were using our materials to construct these  
13 templates.

14 There is very, very few -- little mention of  
09:27:09 15 patents. There's one memo that has one word that says patent in  
16 there. And I don't know that that is, in and of itself,  
17 prohibited in a trade secret case.

18 THE COURT: Let me hear from Mr. Voyles, then.

19 MR. VOYLES: Your Honor, if I may, thank you. Listen,  
09:27:26 20 your Honor. They want to use these patent documents because  
21 they claim that they are some confession on behalf of Accenture.

22 THE COURT: They're what now?

23 MR. VOYLES: A confession --

24 THE COURT: Confession.

09:27:37 25 MR. VOYLES: -- by Accenture. So let's just

1 understand what they want to use them for and the significance  
2 of them.

3 But they don't have a patent claim here. They've  
4 got a patent claim somewhere else, a separate patent litigation;  
09:27:46 5 and you can infringe a patent without violating the trade  
6 secret. In fact, the law is very clear on that: Once something  
7 becomes patented, it's not a trade secret anymore.

8 And what these e-mails relate to is that in 2006  
9 Wellogix sent demand letters to BP claiming that they were  
09:28:04 10 infringing or may be infringing on these patents that they had  
11 issued; and as a result of that, there was exchanges of e-mails  
12 between BP and Accenture and maybe others -- I don't recall all  
13 these -- in which they discussed whether that claim had merit,  
14 whether or not they should do things, not do things based on the  
09:28:22 15 patent claim.

16 That doesn't go to trade secrets. It goes to  
17 patents and patent infringement, and it would be -- and it's not  
18 only irrelevant to this case because it's not a patent case --

19 THE COURT: Prejudicial. It's prejudicial.

09:28:34 20 MR. VOYLES: -- it's also highly prejudicial and will  
21 be confusing to the jury.

22 THE COURT: All right, thank you.

23 MR. LAMINACK: Most of these documents and the  
24 language in here all relates to the template development, and  
09:28:41 25 that is one of our trade secrets, and we've got a whole line of

1 documents that talk about the templates, what they were doing  
2 with the templates; and these two documents, you've heard them  
3 before, refer specifically to the templates and the build going  
4 on around the templates and what they were doing in P2P with  
09:29:00 5 respect to templates and some of our other, quote, IP.

6 Now, we've agreed to take the word "patent" out  
7 of there. I don't -- you know, but --

8 THE COURT: Okay. Let me just -- this is what I'm  
9 going to do: I'm going to allow it and I'm going to instruct  
09:29:14 10 the jury as part of my opening instructions that patent and  
11 trade secrets are quite different.

12 MR. LAMINACK: Thank you, your Honor.

13 THE COURT: Okay. Everybody here? I want -- I'll go  
14 get Mrs. Loewe and we'll then have the jury come in and do the  
09:29:27 15 cry. I'll be right back.

16 MR. PIRTLE: I'm going to run to the restroom.

17 THE COURT: Yeah, yeah.

18 MR. PIRTLE: Okay.

19 (Court recessed at 9:29 a.m.)

09:30:33 20 (Court resumed at 9:34 a.m.)

21 THE COURT: Ladies and gentlemen, good morning, and  
22 welcome back. Thank you, in particular, for your punctuality.  
23 That makes life much easier.

24 Do I have counsel's permission to proceed with  
09:35:54 25 opening instructions?

1 MR. PIRTLE: Yes, your Honor.

2 MR. VOYLES: Yes, your Honor.

3 THE COURT: Members of the jury, you've now been sworn  
4 as a jury to try this case. As the jury, you will decide  
09:36:03 5 disputed questions of fact. As the judge, I will decide all  
6 questions of law and procedure. From time to time during the  
7 trial and at the end of the trial, I'll instruct you on the  
8 rules of law that you must follow in making your decision.

9 Soon the lawyers for each of the parties will  
09:36:20 10 make what is called an opening statement. Opening statements  
11 are intended to assist you in understanding the evidence. What  
12 the lawyers say, however, is not evidence.

13 After the opening statements, the Plaintiff will  
14 call witnesses and present evidence. Then the Defendant will  
09:36:36 15 have an opportunity to call witnesses and present evidence,  
16 also. After the parties' main case is completed, the Plaintiff  
17 may be permitted to present rebuttal evidence. After all the  
18 evidence is completed, I will give you my closing instructions.  
19 Then the lawyers will make their final argument to you and you  
09:36:55 20 retire to decide the case.

21 Keep an open mind during the trial. Do not  
22 decide any fact until you have heard all the evidence, my  
23 instructions, and the closing arguments. Pay close attention to  
24 all the testimony and evidence from both sides. If you would  
09:37:13 25 like to take notes during the trial, you may do so. If you do

1 take notes, be careful not to get so involved in note-taking  
2 that you become distracted and miss part of the testimony. Your  
3 notes to be used only as aids to your memory; and if your memory  
4 should later be different from your notes, you should rely on  
09:37:29 5 your memory and not your notes.

6 If you do not take notes, rely on your own  
7 independent memory of the testimony. Do not be unduly  
8 influenced by the notes of other jurors. A juror's notes are  
9 not entitled to any greater weight than the recollection of each  
09:37:45 10 juror concerning the testimony.

11 Even though a court reporter is present making  
12 stenographic notes of everything that is said, a typewritten  
13 copy of the testimony will not be available for your use during  
14 deliberations. On the other hand, any exhibits that are  
09:38:01 15 introduced will be available.

16 Until this case is over, do not discuss the case  
17 with anyone and do not permit anyone to discuss this case in  
18 your presence. Do not discuss the case even with the other  
19 jurors until all the jurors are in the room actually  
09:38:16 20 deliberating at the end of the case.

21 If anyone should attempt to discuss the case or  
22 to approach you concerning the case, you should inform the Court  
23 immediately. Hold yourself completely apart from the people  
24 involved in this case: the parties, the witnesses, the  
09:38:31 25 attorneys, and persons associated with them. It is important

1 not only that you be fair and impartial but that you appear to  
2 be fair and impartial.

3 Do not make any independent investigation of any  
4 fact or matter in this case. You are to be guided solely by  
09:38:47 5 what you see and hear in the trial, not learning anything about  
6 the case from any other source. In particular, as we discussed  
7 yesterday, do not read in the newspaper or listen to the radio  
8 or TV discussing the case.

9 Now, as you heard yesterday, it's a case about  
09:39:05 10 intellectual property. I'm going to give you a very summary  
11 description of the particular corner of the universe of  
12 intellectual property that we're going to be dealing with.  
13 Intellectual property covers a lot, and we're going to be  
14 dealing with a specific part of it. In particular, we're going  
09:39:20 15 to be dealing with trade secrets.

16 Now, let me draw a distinction that will be very  
17 important in this case. A trade secret is exactly what the name  
18 implies. It remains secret. A patent, which I'm sure you've  
19 also heard of, is the opposite. It's when an inventor goes to  
09:39:40 20 the Patent and Trademark Office in Washington and says, "I have  
21 created something original and I want the exclusive license for  
22 it."

23 A patent cannot exist as a trade secret. That is  
24 a contradiction in terms. A trade secret is secret. A patent  
09:39:57 25 is a public statement and a request by the inventor to grant a

1 license, a franchise for the exclusive use of the inventor  
2 subject only to his right to license it to others for their use.

3 Does everybody understand that distinction?

4 THE JURY: (Indicated yes.)

09:40:18 5 THE COURT: Okay. Now, let's talk for a minute about,  
6 more specifically, what a trade secret is. In order to find  
7 that Accenture misappropriated Wellogix' trade secrets, you must  
8 find each of the following elements by a preponderance of the  
9 evidence:

09:40:32 10 Number one, a trade secret exists.

11 Number two, the trade secret was acquired through  
12 a breach of a confidential relationship or discovered by  
13 improper means.

14 Three, that Accenture used the trade secret  
09:40:45 15 without authorization from Wellogix.

16 And four, Wellogix suffered damages as a direct  
17 and proximate result of such use.

18 During the trial, as you've already noticed, it  
19 may be necessary for me to confer with the lawyers out of your  
09:41:03 20 hearing or to conduct a part of the trial out of your presence.  
21 I will handle these matters as briefly and as conveniently for  
22 you as I can, but you should remember that they are a necessary  
23 part of any trial.

24 Thank you for your attention. It is now time for  
09:41:18 25 opening statements.

1 Mr. Pirtle, do you wish to proceed?

2 MR. PIRTLE: Yes, your Honor.

3 THE COURT: Thank you.

4 MR. PIRTLE: May it please the Court.

09:41:26 5 Opposing counsel.

6 Your Honor, may I proceed?

7 THE COURT: You may proceed.

8 MR. PIRTLE: Good morning.

9 THE JURY: Good morning.

09:41:40 10 MR. PIRTLE: First, before we get started with the  
11 subject, I want to do the most important thing. I want to  
12 introduce you-all to my client. This is Ike Epley. You saw him  
13 yesterday. He is the CEO, the head man, at Wellogix. Ike and  
14 his family are from Houston. He's been in Houston all his life.  
09:42:02 15 He has been in the oil field services business, him and his  
16 family all his life.

17 His granddaddy founded and owned a mud company,  
18 which is something you'll hear about, mud anyhow, in this case.  
19 So he was born into oil field services. He was -- as a CEO of  
09:42:25 20 Wellogix, they had about 70 employees working here in Houston,  
21 all of them working towards creating a unique and very valuable  
22 piece of software and intellectual property that was used in the  
23 oil field business.

24 The thing, in sum, what they did was to create a  
09:42:51 25 solution for what is called complex services. Believe it or



1 not, mud is a complex service in the oil field. And the  
2 definition of a complex service, to put it quite simply, is a  
3 service that, when you order it, you don't know how much you need and  
4 maybe not even all the kind that you need.

09:43:11 5 So you cannot quantify how much of it would have  
6 been delivered and match that up with the type of contract. And  
7 what Ike and his team did was figure out a way to quantify  
8 things like mud so that the oil companies could control costs.  
9 That was the main focus of Wellogix' software.

09:43:34 10 I think his granddaddy would have been proud of  
11 him. Or maybe not, he's in the mud business. So that is -- and  
12 I'll tell you more about complex services in a little bit. I  
13 want to tell you: We're proud to represent Ike. We're proud to  
14 represent Wellogix. And we're proud to be here today before you  
09:43:53 15 asking that you address a wrong, mainly, that Accenture stole  
16 our intellectual property, our trade secrets.

17 Before I go over any documents, direct evidence  
18 you'll see in the case, I want to lay out the playing field, so  
19 to speak, so that you-all understand what I'm talking about. I  
09:44:17 20 wish we could do question and answer, but that time is over. So  
21 it's just me talking.

22 We're Wellogix. So I'm going to put us in this  
23 box. You're also going to hear evidence, quite a bit of  
24 evidence, about -- and you've already some -- about BP; and I'm  
09:44:58 25 going to say "and others." BP, as you-all know, is a large oil

1 company. What they do is they, for the most part, drill oil  
2 wells.

3           You're going to find out in just a second why  
4 complex services is so valuable and was such a big deal. In BP,  
09:45:20 5 there's a section called E&P that you'll hear about. It stands  
6 for exploration and production. And then underneath that,  
7 there's a section called D&C. It's in the documents, and that's  
8 drilling and completions and what that section of BP does is  
9 just what it sounds like. They drill wells and they complete  
09:45:46 10 wells.

11           So these guys are over here drilling oil wells;  
12 and when you're drilling oil wells, 70 to 80 percent of the cash  
13 burned, the amount of money spent by this large oil company and  
14 others, is occupied within that area of D&C. These guys spend  
09:46:11 15 not hundreds of millions but billions of dollars drilling for  
16 oil, like, in the deep water Gulf of Mexico. We talked about  
17 that a little bit yesterday.

18           And when these oil companies are drilling deep  
19 water Gulf of Mexico, they are pouring money out like in  
09:46:29 20 buckets. So you have 70 to 80 percent of everything that this  
21 company is spending, this cash burn, is in this one little  
22 narrow area of D&C, drilling and completions.

23           So you can understand -- or you will understand  
24 that, if there was a way to control that cost, to even shaving  
09:46:52 25 five or ten percent off of that cost by matching number -- or

1 matching of the price that you're being charged for the  
2 contracts that you've pre-negotiated or being able to quantify  
3 how much is actually used, then you can realize a savings of not  
4 thousands, not millions but sometimes hundreds of millions of  
5 dollars.

09:47:10

6 So it's an exciting area, and it's an area that  
7 the oil companies are very interested in, and it's an area that  
8 Ike's company was working on in 1999. They got together with  
9 some petroleum engineers that were with the company,  
10 ex-Halliburton people, and some tech guys and they started  
11 trying to marry the two and use the tech guys to do the  
12 technology where they could make this electronic and they'd use  
13 the resources of the guys who knew the oil field services -- one  
14 of them named John Chisolm -- to figure out what was needed for  
15 a certain type of well and a certain type of location and a  
16 certain type of depth, what type of pipe, what type of  
17 waterline. And it goes on and on, and I'll show you an example.  
18 So they quantified this, and there was quite a bit of excitement  
19 about that.

09:47:50

20 So they're complex services. And you'll hear  
21 terms like eField Ticket, which is a way of electronically  
22 tracking what goes on both onshore and offshore and what comes  
23 in and out of an oil well. You'll hear things like complex  
24 services templates, which is a way you can plan a well and track  
25 a well's development. And you'll hear terms like work flow

09:48:07

09:48:31

1 navigator. And it's different ways of electronically managing  
2 this huge cash burn.

3           Now, Accenture -- I think they go by ACN -- is a  
4 large consulting firm, a big outfit; and what they do is they  
09:48:55 5 consult with, in particular, the oil companies, BP and others,  
6 to help BP implement certain -- they call it solutions. It's  
7 kind of corporate talk, but it's too simple to say they're  
8 installing software, it's too complex to say they're building  
9 it. They are implementing it. But you don't just take software  
09:49:17 10 out of a box and stick it onto a company like BP's computers.  
11 It is a large, large job to get the system right and do the  
12 training.

13           So Accenture, part of the way it makes its living  
14 is consulting with folks like BP and installing software  
09:49:35 15 packages. The -- by far, the largest company that Accenture,  
16 software that it installs, is a company called SAP.

17           SAP is a large German software company along the  
18 same lines and size as Oracle. And what they do is they  
19 dominate the oil and gas industry and the services industry.  
09:50:09 20 They have almost -- and I think you'll see figures on this -- 90  
21 percent penetration is what they call it into that market. So,  
22 like, 90 percent of folks out there, these big majors are  
23 running their software either for accounting or other purposes.  
24 So they dominate the market.

09:50:27 25           The largest implementer of SAP software in the

1 world is Accenture, and you will hear they make billions of  
2 dollars a year implementing SAP software. These companies have  
3 a corporate relationship at the board level. Their boards meet  
4 together. And they have joint facilities in Walldorf, Germany,  
09:50:50 5 for the development of new software. They are joined at the  
6 hip.

7                   In the year 2000, Accenture and Wellogix got  
8 together and worked on a project called eServices at BP, and  
9 I'll show you documents on it. And Accenture was the  
09:51:21 10 implementer and Wellogix was working on a complex services  
11 solution, these templates, for eServices at BP.

12                   In all these relationships back and forth, there  
13 was confidentiality agreements. And later on -- and we'll track  
14 it through the documents -- SAP came up with a solution for  
09:51:41 15 procurement. And you're going to see the word "P2P." P2P is  
16 what BP was trying to achieve, Purchase-to-Pay, which is,  
17 basically, paperless purchasing of stuff to make them more  
18 efficient.

19                   SAP had a solution for purchasing simple stuff  
09:52:06 20 like pencils and the kind of stuff that can be quantified  
21 through its SRM product. That's a program, you'll hear. That's  
22 SAP's SRM. Supplier Relationship Management is what it's  
23 called. And it would do a good job on purchasing most regular  
24 things.

09:52:35 25                   Where they were lacking and what the evidence is

1 going to show is they didn't have the ability to quantify  
2 complex services. SRM's software at the time could not do what  
3 our software could do which is quantify complex services.

4           They had what you will see in the documents is  
09:52:54 5 called a gap, and they needed what will be known as a gap  
6 solution. We were brought in as the gap solution for complex  
7 services at BP which SRM and Accenture was installing or  
8 supposedly.

9           And to make all this even funner (phonetic  
09:53:16 10 spelling), there's something else called xIEP, xIEP, which  
11 Accenture was working on with SAP which we had input into which  
12 was another solution for complex services. The bottom line to  
13 this is we provided our intellectual property to SAP and to  
14 Accenture under confidentiality agreements that you'll see, and  
09:53:50 15 we provided on multiple occasions -- and I'll go over the  
16 multiple occasions -- Accenture access to our intellectual  
17 property and trade secrets starting in 2000; and there's  
18 confidentiality agreements for every one of those encounters;  
19 and SAP did due diligence, talking about buying us.

09:54:10 20           So at one point in time in '03, '04, SAP was  
21 talking about buying this company and Accenture was talking  
22 about buying Wellogix and doing due diligence on it. And all of  
23 this relationship is all covered by non-disclosure agreements,  
24 including the information that we gave for xIEP.

09:54:30 25           What happened was at a point in time at the last

1 minute, they cut us out, they being Accenture, who was the  
2 implementer, and SAP; and they went ahead and did the BP project  
3 without us; but that was after they got their hands on our  
4 intellectual property.

09:54:46

5 I want to show you what the evidence in this  
6 case, the hard documentary evidence, is going to show.

7 Chuck, put up Exhibit 56, if you would.

09:55:32

8 Remember I told you beginning in the year 2000,  
9 Accenture was the implementer and we were the persons supplying  
10 the technology -- or the company supplying the technology to BP  
11 for a project called eServices. This memo dated June 13th of  
12 2000, relays information from a Mark Greene.

09:55:53

13 You'll get to hear about Mr. Greene. Mark Greene  
14 is one of the upper level folks at Accenture. He's transmitting  
15 off of, you'll notice, a BP email address; but he's most  
16 certainly an Accenture employee; and he was at the time.

09:56:12

17 Subject is template status. That's our complex  
18 services templates, and you can tell. It says, "For today's  
19 weekly team meeting, I'd like to get a full sense of where the  
20 template team is at with regards to the actual development of  
21 the pilot functional templates, tech and commercial, and what's  
22 currently in WellBid's shop for development.

09:56:33

23 WellBid is a company that we merged with in 2000  
24 to form Wellogix. So Accenture was with us from the beginning,  
25 and they were with us developing our templates from the

1 beginning under confidentiality agreements.

2           You'll notice down a few paragraphs below he  
3 talks about the Electronic Field Ticket we've been discussing is  
4 a related matter that seems to be causing some real concern.

09:56:51 5 This was during the early phases of the development of our  
6 electronic field ticket which progressed over the years.

7           Chuck put up 813.

8           This is a few months later. Still in the year  
9 2000. Mark Greene -- and he is writing an e-mail to Tracy  
09:57:19 10 Galloway, T. Galloway, at BP; and this is concerning -- as you  
11 can see, it says, "Also, now that we've got the cementing  
12 templates and the" -- and that's eField Ticket -- "it is  
13 critical that we test them via the portal versus testing them by  
14 getting directly into WellBid." So by 8-16-2000, Mark Greene is  
09:57:40 15 saying to Tracy Galloway they have, at least, a cementing  
16 template and the eField Ticket and they're going to test it.

17           The relationship between Wellogix and at the time  
18 Anderson Consulting -- I know this was covered in voir dire,  
19 Accenture's name used to be Andersen Consulting -- was so tight  
09:58:12 20 back in the year 2000 that we presented joint presentations  
21 together. And this is one dated November the 16th of 2000.

22           And see the first page: "Based on the positive  
23 results of eServices Phase One, you have asked us to address the  
24 key question should BP efficiently scale up to present eServices  
09:58:38 25 proof of concept and implement it globally?" And going through



1 this, just point out a few things.

2 Page 7, Chuck.

3 "To achieve this eServices scope, we propose a  
4 core group of solution partners augmented by best-in-breed,  
09:58:59 5 ASPs, and/or service providers." Here's Wellogix over here, and  
6 it's a puzzle, and here's Andersen Consulting being a piece that  
7 fits into the puzzle next to us.

8 Next page.

9 They even go so far as to say "Wellogix and  
09:59:14 10 Andersen Consulting have built, invested, and will continue to  
11 invest in the development of the core industry solution behind  
12 UCW." And then it lists Wellogix and what we're going to do and  
13 Andersen Consulting, core back office integration components,  
14 key training deliverables, benefit realization metrics.

09:59:35 15 We were working on these projects, the templates  
16 and the eField Tickets together. The technology belonged to us  
17 and we had a confidentiality agreement. That's 2000.

18 Now, it's been said in this courtroom -- oh, by  
19 the way, before I get to that: And later on in 2000, they put a  
09:59:57 20 multi-million dollar investment into Wellogix, Andersen  
21 Consulting at the time, did due diligence -- did more due  
22 diligence on us pursuant to the confidentiality agreement and  
23 became an insider of the company. They owned stock in our  
24 company.

10:00:17 25 Now, it's been said in this courtroom that our

1 product didn't have value and that it didn't work. You might  
2 remember that. But looking back at what was going on at the  
3 time, that tells a different story; and I want to refer you --  
4 this is some of the documents you'll see.

10:00:41

5 Put up 985.

6 These things read from the back to the front  
7 here.

8 So go to the back page.

9 This is an Accenture internal document that we

10:01:01

10 got through discovery, and the date on this document is late  
11 November of 2003. And down at the bottom, a Mr. Bryan Ward who  
12 is an employee of Accenture writes to a Mr. Miller who is an  
13 employee of Accenture and says, "As you may recall several  
14 months ago, I suggested that Microsoft could be a candidate to  
15 consider an acquisition of Wellogix."

10:01:23

16 Well, here it is again. In November of 2003,  
17 Accenture is suggesting that Microsoft, Bill Gates' company, buy  
18 us. You'll have to use your common sense to determine whether  
19 or not they had a favorable view of us.

10:01:49

20 He goes on. "I'm writing to see if you and I can  
21 discuss Wellogix with regard to Microsoft. I'm completely aware  
22 of Ike's ongoing discussion with SAP regarding and acquiring" --  
23 it's written wrong -- "regarding an acquisition of Wellogix by  
24 SAP and the discussions around Wellogix' fit into E&P team link  
25 with Peggy.

10:02:21

1 All right. SAP is also in late November of 2003  
2 talking about buying Wellogix, according to this memo; and also,  
3 there's something called E&P team link that Accenture is talking  
4 to Wellogix about.

10:02:45 5 "My theory is if SAP does not, in fact, buy  
6 Wellogix, Accenture will get marginalized as the integrator and  
7 change management consulting and future implementations of  
8 Wellogix at upstream clients." It's a mouthful. It looks like  
9 we got Accenture worried about getting continuing business for  
10:03:09 10 installing this software if someone else buys Wellogix.

11 And it goes on. You'll be able to take these  
12 documents back to the jury room with you. Clearly, SAP is  
13 trying to grow their consulting practice and they have behaved  
14 with PRA implementation and they have -- they behaved with PRA  
10:03:35 15 implementation. We will get shut out. Peter Meyer has asked  
16 Ike to come to Germany next week with a number in his head to  
17 discuss an acquisition. Peggy has also set a meeting with Ike  
18 to visit with Mowat in London in December -- on December the  
19 8th.

10:03:56 20 You can tell it was quite a bit of excitement in  
21 late November of 2003 about this company. They're all jumping  
22 up and down for what we've got.

23 "What I propose is that we at Accenture have a  
24 discussion at the right level of Microsoft regarding Microsoft's  
10:04:18 25 acquisition of Wellogix with Accenture as the exclusive

1 integrator and SME. "That's subject matter expert. "Our  
2 chances with Microsoft seem to me to be better than with SAP.  
3 It is my understanding that Microsoft is very interested in  
4 expanding their upstream energy, complex services same as SAP."

10:04:38

5 So you got Microsoft and SAP wanting to expand  
6 into upstream energy and complex services. You have Microsoft  
7 and SAP talking about buying this little old company in Houston,  
8 Texas. And there is more, however.

10:05:12

9 The evidence is going to show you that from right  
10 up to 2005, right up to the point where they started making our  
11 complex service templates, talking about Accenture, although  
12 there was some bumps in the road and some spats and  
13 disagreements, the bottom line is they liked us. They didn't  
14 like us, they loved us. They liked our product.

10:05:33

15 You don't try to get Microsoft to buy a company  
16 unless they liked it. You don't have a large German software  
17 company talking about buying you unless you got something of  
18 value. And we did. We had something of value.

10:05:51

19 So what happened? Well, one of the things that  
20 happened is we were working on this little box I filled in, this  
21 xIEP project. That was a secondary project to try to -- that  
22 Accenture and SAP were doing to use a different language of  
23 software to try to fill in a gap, including complex services;  
24 and they asked us to participate.

10:06:14

25 And Chuck, put up 473.

1 473 is a document -- and I'm just going to go  
2 through the first part of it -- written by Ms. Kostial who is  
3 sitting over there. "Discussed with Maddox today on the IEP and  
4 if we are harvesting IP from Marathon, he has retracted a bit  
10:06:47 5 and Marathon is now no longer a strategic co-development partner  
6 with the aim to lift SAP/WL" -- WL is Wellogix -- "to Walldorf."  
7 That's that joint development facility.

8 "We agreed that we need to harvest this knowledge  
9 much like Shell and ensure that the development team in Walldorf  
10:07:09 10 got the requirements defined for Scenario 3 Complex Services.  
11 This is whether SAP gets a deal done with Wellogix or not. I am  
12 fine with this approach."

13 So we are -- so we are out at Marathon. And  
14 guess who the implementer is at Marathon? Accenture. And we're  
10:07:44 15 trying to -- I said "and others." We're trying to implement our  
16 solution at Marathon, and we're out at Shell. And guess who  
17 else is out at Shell? And guess who is harvesting knowledge at  
18 Shell and Marathon and sending it to Walldorf? We didn't know  
19 about that, folks. We didn't know about this marriage.

10:08:11 20 And then we got hired on another project out at  
21 BP called eTrans. ETrans -- and in eTrans we were trying to  
22 develop a paperless solution in two different areas -- the San  
23 Juan basin, in particular; it's in Colorado -- for companies  
24 purchasing onshore.

10:08:35 25 And Accenture wasn't part of that. A company

1 called SAIC was picked by BP to be the implementer. And as part  
2 and parcel of that -- Accenture was always at BP. It's not like  
3 they did one project. They had different projects going on at  
4 different times, and they were picked to head up another project  
5 called P2P.

10:08:59

6 But what was going on at BP was --

7 Put up 476.

8 Second page, Chuck.

9 This is an internal correspondence from Accenture

10:09:34

10 that we got during discovery. I'm looking at Mr. Ward's e-mail  
11 to Royce Bell; subject, Wellogix. "Royce, I met with Ike Epley  
12 and Tom Jordan" -- they're both employees of Wellogix -- "this  
13 morning for a debrief of their meeting with you in London last  
14 week." Since I introduced you -- introduced Ike to you in

10:09:58

15 London a year ago, I have probably been the one person in  
16 Accenture who has been the most -- that's had the most exposure  
17 to Wellogix. Therefore, I'm going to give you my unsolicited  
18 opinion on the opportunity. I strongly believe the upstream  
19 procurement, slash, supply chain is fertile ground for Accenture  
20 to establish a beachhead where our competitors have not and that  
21 Wellogix is a pathway to this end.

10:10:18

22 He goes on to say, "I believe BP alone can  
23 generate annual fees in excess of 20 million if Accenture  
24 controlled Wellogix. The urgency for Wellogix is their  
25 inability to meet requirements of the BP rollout, 150 vendor

10:10:41

1 signup and will have to look to someone like Accenture to  
2 provide the horsepower. Unless we make a move, SAIC or IBM is  
3 their likely choice."

4 SAIC is another company that does consulting like  
10:11:02 5 Accenture and so does IBM.

6 Let's go to the front memo on this page. This is  
7 from Mark Greene. You've seen e-mails from him before. This is  
8 November the 7, 2004. The subject is Wellogix, our company.  
9 And he is talking about having a meeting with Dave Barnes who  
10:11:24 10 was the head of eTrans.

11 He said, "My strategy continues to be to  
12 understand how eTrans is moving at BP still centered in  
13 Durango/Farmington and not be perceived as actively pursuing  
14 eTrans work." He goes on, "PS: Tas Moak has recently joined  
10:11:43 15 SAIC as the eTrans project manager. I ran across him last week  
16 in WL4 lobby. I plan on calling him to got (sic) to lunch and  
17 catch up on things, including eTrans status."

18 What they're doing is -- and you'll see through  
19 the documents -- they're tracking -- even though they're not the  
10:12:06 20 implementer, they're tracking what we're doing in eTrans. They  
21 had nothing to do with eTrans, and they're tracking what we're  
22 doing.

23 In fact --

24 478, Chuck.

10:12:24 25 You see in November of '04 -- this is Bryan Ward

1 again to Mark Greene. It says, "FYI: Attached, this is what  
2 Wellogix and the BP eTrans team mapped out. Not be distributed.  
3 Bryan Ward." This is a map of our process flow for eTrans, our  
4 newest product.

10:12:49

5 Put up 493. There was something called  
6 SharePoint at BP. It's a product that I believe -- it's a  
7 program that Microsoft, I believe, supplied; and what BP used it  
8 for is, when they had projects, you could upload all the  
9 documents from a project on to this SharePoint so everybody had  
10 access to it. And the same, you'll see, was true of the eTrans  
11 project.

10:13:13

12 The eTrans project was uploaded on the  
13 SharePoint, and Accenture had access to the eTrans project even  
14 though they had nothing to do with eTrans. You can see here --  
15 this is J. Pierce, another Accenture employee, "Thanks for the  
16 update. I would like to stay tightly connected with the eTrans  
17 project especially when they have discussions around changes to  
18 their project plans, i.e., implementing new versions such as  
19 NextGen."

10:13:34

10:13:53

20 That's our -- that was our job upgrade. We  
21 changed languages to what we called NextGen. That was our job  
22 upgrade. And down at the bottom it says "BTW." I think it  
23 stands for by the way. "We did have a good discussion with Dave  
24 Barnes about getting the P2P team access to the eTrans  
25 documentation on SharePoint and setting up sessions between the

10:14:11



1 teams to make sure we incorporate their successes, lessons  
2 learned in the longer term P2P solution."

3           The longer term P2P solution was the one that SAP  
4 was going to implement SRM and we were going to be the gap  
10:14:33 5 solution for complex services. Jay Pierce was heading up the  
6 P2P team for Accenture, and you will see -- and I will not go  
7 through all of them but Accenture got access to all of our  
8 documentation on SharePoint for what we were doing, including  
9 our NextGen product.

10:15:16 10           But around about that time Accenture starting  
11 having other ideas you're going to find out. They had the bulk  
12 of what our intellectual property was. And I'll go over the  
13 different points they had access to it but all the way back to  
14 eServices when we developed our stuff, all of it subject to  
10:15:37 15 confidentiality and moving forward.

16           Chuck, put up 982.

17           The back page of 982 is a memo from Peter  
18 Buettgen who's also with Accenture to Peggy Kostial who is in  
19 the courtroom. It says, "Peggy, hope all is well. It's been  
10:16:08 20 sometime since we've caught up. Anyway, Jeff and I recently  
21 spent some time with Wellogix to get Jeff up to speed on their  
22 offering. My position has not changed concerning our  
23 relationship, but I thought I would check with you and see how  
24 things are going on the SAP front."

10:16:27 25           The next memo up is from Peggy Kostial back to

1 Buettgen. It goes, "No news between SAP and Wellogix. Still  
2 interest with xIEP" -- you'll remember that's that joint project  
3 between SAP and Accenture -- "and customers to include complex  
4 services as a scenario. We need a client to step up. Perhaps,  
10:16:54 5 this is BP. Jeff Williams" -- and you've read memos from him --  
6 "believes that Wellogix' functionality is easily replicated via  
7 xIEP and some mods to the existing SAP SRM suite, but we have  
8 not broached with SAP as of yet."

9 Believes that our functionality, what our stuff  
10:17:27 10 does, is easily replicated after they've seen it. After they've  
11 seen it. After they had access to SharePoint and all our  
12 documentation.

13 Document 210, Chuck.

14 Moving forward in time.

10:18:08 15 Second page. The Peter Buettgen memo.

16 If there's any doubt in your mind as to where  
17 they got the information to replicate these, let's read Peter  
18 Buettgen. Starting with the second paragraph. It's BP and  
19 Wellogix is the subject. "I think it's important for us,  
10:18:33 20 Wellogix, SAP, and BP, to realize that there are additional  
21 opportunities for BP to investigate before making a final  
22 decision concerning the services, procurement, and invoice  
23 reconciliation process. These are two components of Wellogix'  
24 platform. I personally believe that SAP could support the  
10:18:53 25 procurement process and also believe that we could help build

1 the templates so often mentioned. In fact, Accenture assisted  
2 Wellogix in developing their templates. This would be a major  
3 effort and is certainly doable."

4           They can build our templates. In fact, they  
10:19:23 5 assisted us in developing them, which is true, under a  
6 confidentiality agreement. They can build our templates because  
7 they saw what we were doing. They saw the knowledge. And this  
8 is October of 2005. They're talking about building our  
9 templates, and that's what they did. They built our templates  
10:20:02 10 at BP. That's what the evidence is going to show.

11           Chuck, put up 481.

12           At the bottom you see Peter Buettgen; at the top  
13 you see J. Pierce. "Concerning the templates, what is the  
14 current plan for template creation? I saw your detailed notes  
10:20:34 15 that the P2P team has reduced the number of required templates  
16 to be built because they're not sure they will be necessary."

17           Up top, J. Pierce. "We haven't gotten far enough  
18 along to design any of our templates. So I'm not sure where  
19 this is to end up. After seeing examples of templates in  
10:20:58 20 Wellogix and deciding to select the SRM without Wellogix, we've  
21 added a few templates into the scope of SRM."

22           Now, what happened was we went right up to the  
23 date when the request for proposal was going to be responded to  
24 at BP with SAP, with Accenture being the company selected. The  
10:21:22 25 day that the selection process is going to be made, we were cut

1 and they said they'd build it themselves. The day we were cut  
2 out and they said they would build it themselves. And they set  
3 about using the knowledge that they had garnered from the  
4 various confidential relationships to build these templates  
10:21:53 5 using our knowledge.

6 There may be only two companies in the world in a  
7 position to do what these guys did. Certainly Accenture, maybe  
8 SAP. It's all because they had access. It's all because they  
9 gained knowledge from what we were doing.

10:22:12 10 What you will hear in this case is what we were  
11 doing was unique and certainly unique for the time. 1999 to  
12 2000, folks were worried about making drop-down menus that work  
13 on Amazon dot-com. These guys were working on complex services  
14 and quantifying them. They were ahead of the time. We've come  
10:22:30 15 along way in these 13 or so years.

16 At the time they were doing this, this was truly  
17 earth shattering stuff. And they know it. Microsoft -- they  
18 don't talk about recommending to Microsoft to buy you unless you  
19 got something good. And they took the knowledge they gained  
10:22:46 20 from us, from various sources; and they built the templates  
21 themselves or tried to; and we have documents that you'll see  
22 that show it.

23 Another thing: There's been talk about this  
24 company and this product not working. Look at the timeline of  
10:23:22 25 events. I guarantee you under the timeline of events, Accenture

1 itself was very high on Wellogix until the time that Wellogix --  
2 that Accenture decided they were going to build these templates  
3 themselves, until the time that they had enough knowledge in  
4 their bank account, so to speak, to build it.

10:23:57

5 Don't put these up.

6 Before we go on, I want to respond to a couple of  
7 things that's been said in this courtroom.

8 First is Wellogix did not safeguard its trade  
9 secrets. That was said. They had six confidentiality

10:24:11

10 agreements with Accenture. Every one of them signed. In every  
11 one of them they swear we have valuable and unique intellectual  
12 property. Or most of them. I was reading over one this morning  
13 that has that exactly, "valuable" in it. We have six of them,  
14 all signed over the years for various projects.

10:24:37

15 You will find and you can look through as we go  
16 through the evidence in this case, put on witnesses that  
17 Accenture had access to intellectual property under  
18 confidentiality agreements starting in 2000 with eServices, that  
19 2000 memo from Mark Greene I showed you; that in 2000 Accenture

10:25:00

20 made an investment in us and became an insider, a several  
21 million dollar investment, which gave them a level of assets;  
22 that we shared information with them and did demonstrations on a  
23 project called xIEP under a confidentiality agreement; that we  
24 were at Shell, working for Shell doing our business and

10:25:19

25 Accenture was out there and you saw the memo about lifting to

1 Walldorf, harvesting IP; that we were out at Marathon and it's  
2 in the same memo.

3 And you saw the memo about harvesting the IP.  
4 That we worked on the eTrans project for BP and they had access  
10:25:37 5 -- they being Accenture had access to our confidential  
6 information through SharePoint.

7 And in the end you're going to see that the  
8 templates were built and paid for by BP using our knowledge, and  
9 you're also going to hear from our technical expert who happens  
10:26:02 10 to be in the courtroom who's analyzed the latest SAP product  
11 that's come out -- remember, these are the guys that have the  
12 joint board together -- who's analyzed the latest SAP product,  
13 SRM. I think it's seven or there may even be a later version  
14 out now that's called something else. And now, what was our  
10:26:31 15 private information is now appearing in SAP's latest version of  
16 what they're doing.

17 That's what you're going to hear from the  
18 technical expert. So the information has migrated from  
19 Accenture over here and now in SAP SRM. Did they know what they  
10:26:57 20 were doing was wrong? You bet. You bet they did. Because Ike  
21 Epley and his people did something that these giants didn't  
22 expect. They filed a patent of processes. They filed -- they  
23 filed to have their processes for compilation of these complex  
24 services patented, and those patents issued in 2006.

10:27:48 25 Chuck, put up 502.

1 Go to the last paragraph from Mark Thomas.

2 Who you'll find is the person who built the  
3 templates. "Tracy" -- and that's Tracy Galloway -- "it has been  
4 brought to my attention that there is an ensuing dispute that  
5 has some potential for litigation over intellectual capital  
6 rights between Wellogix and SAP that could pose some potential  
7 risk to both BP and Accenture being potentially named as a party  
8 in the action pursuant to our design and development activities  
9 around complex services. In light of this, we wish to have a  
10 meeting to discuss our options relative to template development  
11 efforts and determine whether or not it is best to defer this  
12 activity until such time as such matter is settled or  
13 adjudicated in order to mitigate risk of any forward accusation  
14 of impropriety or infringement with regards to what we're  
15 doing."

16 First e-mail, John Pierce, "We will need an  
17 official position on whether we will develop complex services  
18 templates for BP I think which are more closely related to  
19 Wellogix' patent claims than some other complex services  
20 solutions we're talking about for P2P. We may be at risk if  
21 Wellogix claims that we used knowledge of their product through  
22 involvement with eTrans to design and develop a solution for  
23 BP," which is exactly what they did in addition to their  
24 knowledge through other things that J. Pierce wasn't involved  
25 in.

1 So put up 501.

2 They get to passing this around. We got this  
3 through discovery, too. And up at the first part of this from  
4 J. Pierce is more input from Tracy. That's Tracy Galloway.

10:30:16 5 Mark T., our design solution for complex services templates  
6 based on -- is our design solution for complex services based on  
7 using purely standard SAP functionality, question. This will be  
8 one input into our position. My view is even if we're using  
9 standard SAP functionality, what we design and load into the  
10:30:43 10 templates could be an issue with Wellogix.

11 "This will be one input into our position."

12 THE COURT: Ten minutes, Mr. Pirtle.

13 MR. PIRTLE: Thank you, your Honor.

14 Put up 818.

10:31:30 15 Let's go forward to 4-27-2007. This is going to  
16 come full circle. This is Mark Greene again who, I'm sure, is  
17 going to come here and explain these memos. Sent 4-27-2007.  
18 "Since the P2P RFP," requests for proposal, "responses were  
19 submitted last September, there have been further developments,  
10:32:01 20 some recent, regarding the claims and discussions between BP and  
21 Wellogix. Considering this, we believe it's appropriate for the  
22 next step to discuss with you the applicability of the Wellogix'  
23 claims to the P2P project as noted in our RFP responses. Given  
24 the scope of the claims, the discussion, as it regards Wellogix,  
10:32:23 25 should be among BP, SAP, and Accenture. I want to assure you



1 that subject to the terms of the 2005 MACS and project  
2 agreements executed between BP and Accenture for work conducted  
3 on the P2P project, Accenture acknowledges its responsibility  
4 for patent infringement caused by products created by Accenture  
10:32:45 5 during those previous phases of the project."

6 And there are others that you'll see where  
7 they're talking about infringing on our patents. And yes, we do  
8 have patents on this and, yes, we had trade secrets behind those  
9 patents. A patent is an idea or process in the most general  
10:33:47 10 terms possible.

11 Trade secrets are the know-how that tells you how  
12 to do it. A patent -- a template, they're broader than that;  
13 but you can patent a template; but the know-how, how to build,  
14 the architecture to make the stuff work is the secret. You can  
10:34:08 15 patent a chocolate cake. The ingredients and how you mix those  
16 ingredients together, how long you bake it, what temperature,  
17 that's a trade secret. And that's what they took. They took  
18 our trade secret, and then they tried and did construct  
19 templates for BP out at this -- it was actually for a project  
10:34:34 20 called backbone but global P2P is fine, Purchase-to-Pay.

21 And did they do it intentionally? Absolutely.  
22 Did they know what they were doing? You saw the memos. And I'm  
23 sure they're going to have all kinds of excuses, won't have to  
24 take responsibility, and this, that, and the other.

10:34:56 25 The truth of the matter is this is a trial in the

1 American judicial system about accountability. It's about  
2 holding folks accountable for their actions. The judge  
3 instructed you and we've been challenged to prove every element  
4 of our case. And we're going to do that. We're going to prove  
10:35:20 5 every element that they stole our trade secret. And we're going  
6 to prove that they did it knowingly. And when we do that, we're  
7 going to ask you to hold them accountable for their actions and  
8 compensate this company.

9 In December of 2006, he had to lay off almost 70  
10:35:52 10 folks, tell them not to come back to work, 70 folks that had  
11 given a good bit of their life to creating this; and now, the  
12 company barely functions, and these folks are out of work.  
13 Accountability.

14 Thank you for your time.

10:36:16 15 THE COURT: Thank you very much.

16 Ladies and gentlemen, I need to take a criminal  
17 matter at some point.

18 Are counsel for both parties here?

19 (No response.)

10:36:28 20 THE COURT: No, they're not.

21 Okay. So for the Plaintiff, we can -- I mean,  
22 for the Defendant, I'm sorry, we can get started on your opening  
23 statement and take a break in the middle of it or we can -- we  
24 can have a break now that will last a little bit longer than  
10:36:47 25 usual.

1 MR. VOYLES: Your Honor, I suggest we take a break  
2 now.

3 THE COURT: Okay. Will you-all please rise for the  
4 jury.

10:36:55 5 (Court recessed at 10:36 a.m.)

6 (Court resumed at 11:10 a.m.)

7 THE COURT: All right. You may proceed. You may  
8 proceed, Mr. Voyles.

9 MR. VOYLES: Thank you, your Honor.

11:10:58 10 Good morning, ladies and gentlemen. We had the  
11 pleasure to meet yesterday. My name is Robb Voyles; and along  
12 with our team over here, we represent Accenture and Accenture's  
13 employees in this case.

14 One member of our team that you didn't meet  
11:11:13 15 yesterday because she was not here is Stacey Manela. Stacey is  
16 working on our technology. She's behind that pole. So you  
17 probably won't even be able to see her. Stacey works on our  
18 technology for the trial, and she'll help us in pulling up  
19 exhibits and things of that nature as time goes on.

11:11:30 20 Another person that you did meet yesterday that I  
21 want to reintroduce to you is Peggy Kostial.

22 Peggy, could you please stand.

23 Peggy is with Accenture. She lives and works  
24 right here in Houston, Texas. She's the client service group  
11:11:47 25 lead for North America in the energy business.

1 Peggy, thank you.

2 Peggy worked closely with Wellogix. She  
3 considered Mr. Epley a good friend. She may still consider him  
4 a good friend. She actually tried to promote his business,  
11:12:03 5 tried to help him in his business, tried to help Wellogix in  
6 their business; and then he turned around and accused her and  
7 the people that work with her of stealing from him. It just  
8 didn't happen.

9 Now, Accenture, as you already heard, is a  
11:12:20 10 management consulting and technology company. One of the  
11 important things they do and the thing they do that's pertinent  
12 to this case is they help their clients select and implement  
13 software. That's a significant part of their business, and  
14 that's what we're here about today.

11:12:39 15 They employ over 7,000 people in Texas and over a  
16 thousand here in Houston. And the work that they did in this  
17 case was not to steal anything from anybody. The work they did  
18 related to this case with BP and with other clients is to help  
19 them pick software; and then, once they picked it, helped them  
11:13:01 20 implement it; and we'll talk about that a little bit more later.

21 Wellogix, as you heard so directly from  
22 Mr. Pirtle, is accusing Accenture's employees of stealing from  
23 him, of stealing its trade secrets; and they'll have you believe  
24 that this case is about a big company stealing something from a  
11:13:19 25 small company. But that's not what this case is about at all.

1 This case is about my client, Accenture, and its  
2 employees having to come into court and defend themselves  
3 against baseless allegations. Remember, accusations aren't  
4 proof. Anyone can file a lawsuit and attack somebody's good  
11:13:46 5 name, and then what happens is you just got to come into court  
6 and defend yourself.

7 Anyone who's ever wrongfully been accused of  
8 something knows how Accenture's employees feel, and that's why  
9 we're here today. Because they've been accused of stealing and  
11:14:02 10 it just didn't happen, and it's up to you to make sure that  
11 fairness prevails.

12 You heard a little bit from the judge this  
13 morning and you heard yesterday during voir dire about the  
14 burden of proof. I believe that when you hear all the evidence  
11:14:18 15 in this case, you're going to be convinced that my client didn't  
16 steal anything from Wellogix. But it's important to remember  
17 who the parties are in this case.

18 You notice I go second. Yesterday, we went  
19 second. Today, we go second. I get to sit over there. I don't  
11:14:38 20 sit here. I don't even get to sit down during my opening  
21 statement in front of you. And all of that is because Wellogix  
22 is the Plaintiff. And as the Plaintiff, they get to go first.  
23 That's the way our system works; and they've got the burden of  
24 proof, meaning that they got to do the convincing in this case,  
11:14:55 25 not us.

1 But I want you to promise me something. I want  
2 you to promise that throughout this case, you'll wait until you  
3 draw any conclusions until you have the opportunity to hear our  
4 evidence, to hear our cross examinations and to hear our  
5 arguments.

11:15:15

6 So while they'll be presenting their evidence  
7 first, there's five pieces of evidence, important facts in this  
8 case, that I want you to always remember. The first one is  
9 Accenture and its employees did not steal or misuse anything  
10 belonging to Wellogix. It just didn't happen.

11:15:36

11 Second, although Wellogix was a startup company  
12 and although it had issues like all startup companies do -- and  
13 we'll talk about those in some detail in a moment -- Wellogix is  
14 an experienced and sophisticated corporation. They've got  
15 employees who were very experienced in both business and in  
16 technology.

11:16:00

17 Third, the features that Wellogix offered in its  
18 product were not trade secrets. They were known throughout the  
19 industry. And when I say features, I'm talking about things  
20 like what their product does. The things that their product did  
21 were not secrets. They didn't claim them to be secrets they  
22 showed them to everybody, and they showed them to people without  
23 any confidentiality agreements.

11:16:19

24 Now, in this case they're going to come in front  
25 of you and they're going to claim that a lot of those features

11:16:33

1 were somehow trade secrets. But what you'll find out is that  
2 there are a lot of ways to buy complex services and an energy  
3 company doesn't need Wellogix' software to do it.

4 In fact, most energy companies are doing it today  
11:16:50 5 without Wellogix' software, and they've been doing it for years  
6 without Wellogix' software. You're also going to hear that  
7 there are companies that compete with Wellogix. There are  
8 significant companies out there who themselves have software  
9 that provide many of the same features that Wellogix' software  
11:17:06 10 provides.

11 And then you're going to hear that Wellogix  
12 openly revealed, told, provided many of the things that they  
13 claim today to be trade secrets to potential customers without  
14 any confidentiality restrictions whatsoever. If it's not a  
11:17:25 15 secret, ladies and gentlemen, plain and simple, it's not a trade  
16 secret.

17 Fourth, to the extent Wellogix had a trade  
18 secret, to the extent they had one, it was only their source and  
19 object code. Now, you'll have -- you had a glossary that you  
11:17:50 20 were provided; and I hope it's helpful to you throughout the  
21 case because, as you already heard from this morning, you'll  
22 hear from me lots of acronyms flying around and technical terms  
23 flying around; and both sides have tried to provide you some  
24 definitional context for those.

11:18:02 25 And I'll talk in a minute about what code is.

1 But basically, code is what makes the software work, how it  
2 works, makes the computer run the software. Accenture never  
3 had, never had Wellogix' source or object code, never had it,  
4 never copied it, never used it, and thus, never could have given  
11:18:28 5 it to anyone. Couldn't have given it to SAP, couldn't have  
6 given it to BP, couldn't have given it to anyone. They never  
7 had it.

8 The fifth fact that I'd like you to remember as  
9 you're listening to the evidence in this case is that Wellogix  
11:18:44 10 was a startup company. Their software was something to them  
11 that was unique, and it was something that they hoped would meet  
12 a need of the energy industry.

13 And as Mr. Pirtle said, there were many people in  
14 the energy industry who thought it was valuable; but ultimately,  
11:19:04 15 it wasn't chosen. Ultimately, the industry decided not to use  
16 Wellogix' software; and that is what caused Wellogix' problems.  
17 Nothing else.

18 So let's talk about some of those points in a  
19 little more detail. I'm not going to use documents in my  
11:19:25 20 opening. I'm not going to put up e-mails and documents and  
21 other things of that nature. I'm just going to talk to you.  
22 There's going to be plenty of time for documents during the  
23 course of this case.

24 So let's just talk. First, as I said, although  
11:19:39 25 they were a startup company and they had some issues, the



1 evidence will show that Wellogix is an experienced and  
2 sophisticated corporation. It was incorporated in 2000 when  
3 some investors convinced two competing corporations to merge.

4           You've heard about a company called WellBid  
11:20:00 5 already. That was one of the corporations. The other  
6 corporation was the one that Mr. Epley was working at. It was  
7 called, I think, eDirection or something along those lines.

8           I've mispronounced it totally, haven't I?

9           Nonetheless, it was the company that he was with;  
11:20:16 10 and those two companies merged together in 2000. Its management  
11 and personnel are well educated and very experienced in  
12 business, in technology, in software, and in the oil and gas  
13 industry.

14           Wellogix was represented by lawyers and worked  
11:20:33 15 with financial advisors. They employed computer specialists and  
16 software coders. It documented its business relationships and  
17 duties and responsibilities in detailed written contracts with  
18 the companies with whom it worked.

19           And while it is true that there were contractual  
11:20:52 20 arrangements between Accenture and Wellogix, I will strongly  
21 disagree -- and I don't think the evidence will show -- that  
22 there were agreements related to several subjects that  
23 Mr. Pirtle brought up in his opening; but we'll see what the  
24 evidence shows.

11:21:05 25           Unfortunately, as I said, Wellogix' software was

1 not successful in the marketplace. And rather than take  
2 responsibility for that, they've chosen to blame others; and  
3 they haven't just blamed Accenture and its employees. They  
4 blamed SAP, they blamed BP. They blamed everybody and anybody  
11:21:26 5 they can blame.

6 Now, let's talk a little bit about the software,  
7 the features that Wellogix offered in its product were not trade  
8 secrets. As I said, to the extent they had a trade secret, it  
9 was their code, their source code and their object code. The  
11:21:50 10 Court will define a trade secret for you later in the case.

11 Suffice it to say for now, a trade secret has got  
12 to be something special that provides an advantage to the  
13 company in the marketplace and it's got to be secret. Pretty  
14 basic. It has to be confidential.

11:22:07 15 Now, I don't want to downplay Wellogix' software.  
16 We're not here to -- we're not here to say bad things about  
17 Wellogix' software. Don't want to do that. Don't plan to do  
18 that. They did have some development issues with their software  
19 that I'll talk about in a minute that goes to what caused their  
11:22:26 20 problems ultimately. But I don't want to diminish their  
21 software, and I don't want to diminish their efforts in trying  
22 to sell their software.

23 You know, it was kind of cool. And there were a  
24 lot of people that you'll hear, including people from my client,  
11:22:40 25 Accenture, who thought it was pretty cool; you know, who thought

1 it was something that had a chance to make it in the  
2 marketplace. History proved them wrong; but nonetheless, they  
3 thought it was pretty cool.

4 But just because software has an opportunity in  
11:22:57 5 the marketplace to be successful doesn't mean that it's a trade  
6 secret. And certainly, a lot of the things that they're going  
7 to put in front of you -- or maybe not. A lot of times they  
8 just talk about things as opposed to actually showing them to  
9 you.

11:23:15 10 And a lot of things they're going to put in front  
11 of you are not unique to Wellogix. They don't provide Wellogix  
12 any special value. They were exposed to third parties without  
13 any confidentiality agreements. Much of what they have just  
14 isn't special.

11:23:27 15 Their code, how their stuff works is special; but  
16 what their software does is not unique. It's not special. And  
17 the evidence will show that online procurement of goods and  
18 services in the energy and other industries existed long before  
19 Wellogix ever came along.

11:23:50 20 Other software companies, as I said, were in  
21 competition with Wellogix; and these other companies developed  
22 and marketed similar capabilities, similar opportunities to  
23 procure complex services. They'll present concepts and  
24 documents in this case that they'll claim are trade secrets.

11:24:09 25 They'll show you things like process flows and

1 architectural maps and XLM files and other things that they'll  
2 call ideas and intellectual property. Don't be confused by  
3 these. They look technical. They look complicated. It's easy  
4 to jump to the conclusion that they must be a trade secret, but  
11:24:33 5 they're just not, and the proof will be that they're not.

6 Most of them Wellogix didn't claim to be trade  
7 secrets at the time. They didn't treat them as trade secrets.  
8 Today, some of them, Mr. Chisolm admits, are not a trade secret.  
9 Mr. Chisolm is another Wellogix employee who you will hear  
11:24:53 10 testify. In some cases, they couldn't be a trade secret.

11 A lot of the eTransfer information was not a  
12 trade secret because it was prepared by Wellogix, IBM, and SAIC,  
13 two other companies that were involved in the effort, two other  
14 companies with which there was no confidentiality arrangement,  
11:25:13 15 two other companies who had equal rights to that process flow  
16 and documents from eTrans as Wellogix did.

17 In other cases, Wellogix didn't keep the  
18 information confidential. You'll see evidence out of Wellogix'  
19 own witnesses in this case that they showed this information to  
11:25:33 20 dozens of companies, dozens of potential customers. I don't  
21 blame them. They were trying to sell their product.

22 But with these customers, they did not have  
23 confidentiality agreements. And when you do that, you can't  
24 claim it's a secret. None of those companies had any obligation  
11:25:52 25 to keep anything they were told or given by Wellogix' secret.

1 So it's not a trade secret, and their own way of treating it  
2 shows it's not a trade secret.

3           The only thing they really protected, ladies and  
4 gentlemen, was their code, their software code and their object  
11:26:18 5 code; and the way they went about protecting it shows they knew  
6 that to the extent they had a trade secret what it was. It was  
7 their code. Their software code -- source code, first of all,  
8 is the version of a computer program that a computer programmer  
9 actually writes. It's something that a human can read and it's  
11:26:40 10 something -- it's written in computer language. I certainly  
11 couldn't read it. Many of you probably couldn't, but it's  
12 written in computer language that humans who have expertise in  
13 this area can actually read.

14           It tells the computer what to do. That code is  
11:26:58 15 later -- once it's done, it gets compiled into computer  
16 language, language that's unreadable by a human being. If  
17 you've ever seen any of the movies with the ones and twos and  
18 things of that nature, that's computer code. Not readable by a  
19 human being but readable by a computer.

11:27:21 20           The source code and the object code that Wellogix  
21 developed is their trade secret, to the extent they had one; and  
22 they did a lot of things to protect it. They kept it behind --  
23 on their own computers behind a fire wall and other barriers.  
24 They didn't let anyone have it. They didn't let anyone see it.  
11:27:41 25 And in particular, did not Accenture have it or see it; and

1 Accenture never did.

2 Now, there is one exception to what I just said.  
3 That exception is SAP. Wellogix admits that in its efforts to  
4 try to sell itself to SAP, it let SAP see its software code; but  
11:28:09 5 as best we can tell, that's the only exception. SAP was exposed  
6 to their software code; and albeit, they did it pursuant to a  
7 confidentiality agreement, I have no doubt; but they did let  
8 them see the code in contrast to Accenture or anyone else.

9 As a result, Accenture never had, never copied,  
11:28:33 10 or ever used Wellogix' code, either its source code or its  
11 object code or, for that matter, any other trade secret of  
12 Wellogix. And as you just heard, they kept their code under  
13 lock and key except for SAP. Wellogix never provided it to  
14 Accenture. They never possessed it. They never saw it. The  
11:28:58 15 evidence will show they never used it.

16 After all, think about what Accenture does. And  
17 I know at this point you don't fully understand it; and  
18 sometimes, frankly, I don't either because I'm not a technical  
19 person when it comes to these types of things. But as I said  
11:29:16 20 before, Accenture is a software implementer.

21 They get hired to help companies select software  
22 and to implement that software, and they get paid a lot of money  
23 to do it. The software that they help companies select and  
24 analyze is the software developed by third parties. The  
11:29:38 25 software that they implement is implemented -- is implemented

1 software that's been developed by third parties, third parties  
2 like SAP, third parties like Wellogix, third parties like Oracle  
3 and Microsoft and others.

4           Accenture helps select and implement all  
11:29:57 5 different kinds of software products for its customers. And one  
6 of the things they do in implementation is they help configure  
7 the software, they help the customer understand what their  
8 business processes are, and then they help configure the  
9 software to be used with those business processes.

11:30:17 10           Configuration is not coded. It's not software  
11 development. You don't have to have the code, see the code, or  
12 use the code in any way to configure it. They also developed  
13 training materials and managed change management when it comes  
14 to implementation, helping people to understand the new product,  
11:30:39 15 how to use it, how their business has to change, how their  
16 day-to-day activities have to change.

17           That's all part of implementation of the software  
18 in which they help companies do this. But for none of those  
19 things did they ever have to see code. They didn't have to see  
11:30:54 20 SAP's code, they didn't have to see Wellogix' code, they don't  
21 have to see the code of any of the customers for whom they help  
22 to implement, any of the third parties whose software they  
23 implement for their customers.

24           And there's another reason that Accenture had no  
11:31:09 25 reason to see or use or copy Wellogix' code. When it comes to

1 the oil and gas industry, which brings us here today, all  
2 Accenture does is just what I described. They help companies  
3 select and implement software.

4           When it comes to the industry, that's all they  
11:31:28 5 do. Accenture does not and has never created or sold software  
6 of its own to the energy industry that involves complex  
7 services, that involves eField Tickets, that involves templates  
8 like Wellogix, nothing. They have never done that. What they  
9 do is help companies select and implement.

11:32:00 10           Now, Wellogix claims this isn't true, and they've  
11 put up a bunch of e-mails already and things of that nature to  
12 try to show that it's not true. All of these e-mails, ladies  
13 and gentlemen, that you saw this morning were taken out of  
14 context; and the evidence will show that none of them or any of  
11:32:20 15 the other documents indicate that Accenture took or misused  
16 anything belonging to Wellogix.

17           The most significant ones that they showed you at  
18 the end were ones related to patents; and as the judge  
19 instructed you, this is not a patent case. Wellogix sent some  
11:32:38 20 letters to BP in which they made demands with respect to their  
21 newly issued patents in 2006, and there were e-mail exchanges  
22 internal to Accenture and with BP that addressed those patent  
23 infringement claims. That's what they were about.

24           That's not what we're here about. We're not here  
11:32:57 25 about patents or patent infringement. They're completely



11:33:18

1 different things, and it's just an example of Wellogix using  
2 e-mails and documents out of context that have nothing to do  
3 with their trade secret claim here. None of those documents,  
4 none of those e-mails show anything about Accenture stealing  
5 from Wellogix; and the reason they don't is because it just  
6 didn't happen.

11:33:38

7 Now, they'll point to a project called xIEP.  
8 They've already done that in an effort to try to create some  
9 confusion. But Wellogix always knew about xIEP, always; and  
10 they never once complained about it. xIEP is another one of  
11 those acronyms in your glossary. It's kind of a mouthful, but  
12 it stands for composite application integrated exploration and  
13 production.

11:33:56

14 I guess that's why they use the acronym because  
15 it's such a mouthful. But when you understand what xIEP was  
16 about and what it wasn't about, you'll reject this argument and  
17 this accusation. xIEP was a concept that SAP and Accenture  
18 tried to create to simplify the SAP user experience. It was  
19 based on another SAP software product. Not the SRM you heard  
20 about -- we'll talk about that in a minute -- but a completely  
21 different SAP software product.

11:34:21

22 If it had been created, if it had been created,  
23 because it wasn't, the idea was that there would be multiple  
24 different scenarios that this product would help achieve for  
25 energy companies. There were three that actually got on the

11:34:41

1 planning board.

2 One was maintaining oil and gas wells. That has  
3 nothing to do with Wellogix. They don't even claim it does.  
4 The second was managing the drilling process. Again, nothing to  
5 do with Wellogix. The third was complex services. So you may  
6 be saying, a-ha, that has to do with Wellogix; and it certainly  
7 does.

8 The third scenario, if it had ever been  
9 developed, was right in Wellogix' sweet spot; but it wouldn't  
10 have been competed with Wellogix; and it had no reason to copy  
11 or steal any of Wellogix' trade secrets. Why not?

12 Well, the reason why not is because Wellogix,  
13 SAP, and Accenture all had agreed that if that scenario was  
14 developed, Wellogix would participate in xIEP and would be  
15 responsible for it. Not SAP, not Accenture, Wellogix would  
16 participate and be responsible for that.

17 Key Accenture employees fully supported this.  
18 SAP personnel supported it. Wellogix knew about it. They  
19 wanted it. They wanted to participate in this area. And they  
20 worked directly, directly with the customers of xIEP in  
21 connection with that xIEP effort.

22 Mr. Epley over here attended and participated in,  
23 at least, two meetings of the xIEP customer base. There, he  
24 made detailed presentations to those customers about this  
25 potential scenario three. They knew about it. This wasn't

1 something that was a secret to them. And if it had been  
2 developed, it's something they would have been all over and  
3 participated in.

4 But in the end, the evidence will show that xIEP  
11:36:43 5 was a bust. It was a failure. The reason was that the SAP  
6 underlying product that this was all built upon didn't work  
7 properly. That was the reason. And so it was never fully  
8 developed, xIEP. It was never licensed to anyone.

9 In 2006, the one customer, the single customer,  
11:37:08 10 who was providing any funding for this xIEP, which was Shell,  
11 pulled the plug. And as a result, xIEP was dead. The complex  
12 services scenario was never developed and was never used by  
13 anyone. The product -- project was over. The evidence will  
14 show as a result of this that xIEP did not steal or misuse or  
11:37:34 15 take any of Wellogix' trade secrets. It just didn't happen.

16 The next thing that you heard them point to was  
17 something called templates. If I understand their point, they  
18 say in 2000 Accenture helped Wellogix build some templates.  
19 Okay? They say that happened pursuant to a confidentiality  
11:37:59 20 agreement. I don't think that's one of those agreements you're  
21 going to see, ladies and gentlemen, because there was no  
22 confidentiality agreement between Wellogix and Accenture with  
23 respect to the eServices effort that they referred to. But  
24 nonetheless, maybe they will show it to us.

11:38:17 25 But what they're going to try to say is several

1 years later, in 2006, when Accenture was helping BP implement  
2 something called the global P2P project at BP, some Accenture  
3 personnel planned, maybe created something called templates and  
4 that these templates were theirs, were Wellogix, were stolen  
5 from Wellogix.

11:38:43

6 Well, let's talk a minute about what global P2P  
7 was. It was a pilot project at BP in 2005 and 2006 that was  
8 tested at two BP locations. It was intended to include all  
9 aspects of the purchasing process for both the exploration and  
10 production portion of BP's business, and it included drilling  
11 wells, maintaining equipment, and other activities.

11:39:05

12 Complex services, to the extent it was going to  
13 be included, was only a very small part of global P2P. Of  
14 course, templates is a pretty common computer phrase. You guys  
15 work with templates every day to the extent you're on the  
16 computer. It's nothing unique to Wellogix, and I don't think  
17 Wellogix is even so bold as to claim that templates are their  
18 trade secrets.

11:39:26

19 Wellogix doesn't own the common software feature  
20 called templates. And here, the templates that BP asked  
21 Accenture to help work on were nothing like Wellogix' templates.  
22 Their templates are called DynaMaps. They brag about them and  
23 they're proud of them, and they rightfully should be because  
24 they're dynamic and they're interactive.

11:39:43

25 It can actually allow companies to communicate

11:40:04

1 with their suppliers to plan projects in an interactive and  
2 dynamic way, but the templates that Accenture and BP were  
3 talking about were not even close to that, not in any way  
4 similar. They, instead, were simple lists of goods and services  
5 based on information provided by BP and using standard  
6 functionality that existed within SAP's SRM, Supplier  
7 Relationship Management software, that had long existed and that  
8 had nothing to do with Wellogix.

9 In the end, they weren't even software -- or  
10 software code. They were simply data. And that was BP's data,  
11 by the way, not Wellogix. And most importantly, they weren't  
12 ever used by anyone anywhere. They were built in the  
13 development phase of the project.

14 That's when it was contemplated being built, in  
15 the development phase of the project; but they were never put  
16 into production in the pilot or anywhere else at BP. In fact,  
17 the P2P project only went through that pilot phase that I talked  
18 about a moment ago; and in that pilot phase, complex services  
19 weren't even included.

20 They weren't even part of what BP tried to do in  
21 the pilot phase; and in the end, they decided, BP did, not to  
22 expand P2P beyond the pilot. So the evidence is going to be  
23 clear that there were no Wellogix' trade secrets used in BP's  
24 P2P project. It just never happened. The P2P project as  
25 implemented in the pilot phase never even included complex

1 services.

2           The next thing you heard a bunch about already  
3 this morning was eTrans and the eTrans SharePoint site. BP has  
4 lots of pilot projects, and eTrans is just another one. eTrans  
11:42:13 5 actually predated the P2P project that we just talked about. It  
6 was a pilot project from 2004 to early 2006 on which Wellogix  
7 and two other consulting firms, IBM and SAIC, worked.  
8 Accenture, as Mr. Pirtle correctly said, was not involved in the  
9 implementation of eTrans.

11:42:37 10           Now, a SharePoint site is a Microsoft product.  
11 It's simply a way that allows the user to store documents for a  
12 specific purpose. Here -- here, BP made the decision to store  
13 its documents from its eTrans project on a SharePoint site.  
14 There was no Wellogix' code or other trade secrets on the BP  
11:43:04 15 eTrans site.

16           They're not going to show you that they had any  
17 code or other trade secrets on that site. They'll show you  
18 things they say might have been on that site and they may show  
19 you a couple of things that were on that site, but none of them  
11:43:18 20 are code, none of them are trade secrets.

21           In fact, during eTrans, Wellogix provided its  
22 software through a portal and behind a fire wall. In other  
23 words, to the extent its software was provided during eTrans,  
24 the access to it by the eTrans folks at BP was through a portal  
11:43:39 25 and behind a fire wall. They didn't have the code. They

1 couldn't have misused it.

2           There's architecture and process flow maps  
3 related to the eTrans project. Those are not Wellogix' trade  
4 secrets. They were created by IBM and SAIC and Wellogix  
11:43:59 5 together. They don't constitute trade secrets. Wellogix will  
6 point to a couple of documents and say these documents are like  
7 what was on eTrans, and they got a witness who says that.

8           But their own witness -- oh, and they'll also  
9 claim, by the way, that those documents contain code.

11:44:22 10           But their own employee who actually was  
11 responsible for those documents and created them will testify  
12 that they are not code at all. They don't contain Wellogix'  
13 code.

14           So what was on the SharePoint site? There were  
11:44:40 15 things on that site like lessons learned and issue logs and  
16 change management information related to the eTrans project. BP  
17 legitimately wanted to learn from that information in connection  
18 with doing a new project at BP, the global P2P project. It made  
19 business sense.

11:45:01 20           It made perfect business sense for BP to want to  
21 use this information. And Wellogix believed that made business  
22 sense, too, because, despite what you were shown this morning,  
23 the most important thing to remember about the eTrans site, the  
24 SharePoint site on eTrans, the information that was on there and  
11:45:25 25 who and who didn't have access to it is that Wellogix knew about

1 it every step of the way.

2 Mr. Epley, in fact, knew that in the time frame  
3 of those e-mails that you were shown, BP had created the  
4 SharePoint site, BP was giving Accenture access to it, and  
11:45:49 5 Wellogix' personnel even participated in putting information on  
6 that site and sharing that information with others.

7 There was nothing secret about it. There was  
8 nothing untoward about it. Nobody was trying to hide anything  
9 from Wellogix about it. They knew about it. They had never  
11:46:07 10 once objected to it. Because they knew they didn't have any  
11 trade secrets on that site. That didn't concern them.

12 What they wanted instead was they wanted eTrans  
13 to be part of P2P. And so they participated in this effort in  
14 the hopes that eTrans was a step in the process of P2P.

11:46:27 15 Well, it turned out that BP decided to go a  
16 different direction on P2P; and that disappointed, to say the  
17 least, Wellogix. But they can't come in here now and say that  
18 this was something secret from them because they knew about it.  
19 The evidence will show that Accenture never took any information  
11:46:49 20 off of the eTrans SharePoint site that belonged to Wellogix and  
21 used it at BP or anywhere else. There wouldn't be a reason to.

22 And remember, eTrans didn't even involve these  
23 DynaMaps, these templates. It only involved eField Ticket. So  
24 the very thing they're claiming Accenture did with the templates  
11:47:13 25 had nothing to do with eTrans. It just doesn't make any sense.



1 The evidence is going to show and it will show  
2 that there were no trade secrets on the eTrans site of Wellogix  
3 and, most importantly, that Accenture didn't have them or didn't  
4 use them at BP or anywhere else. It, frankly, just didn't  
5 happen.

11:47:36

6 Now, the last claim that's levied at us and was  
7 in opening is that we, Accenture and its employees, somehow gave  
8 Wellogix' code and trade secrets to SAP and that SAP used that  
9 code to modify its SRM software to include complex service  
10 functions, the way Wellogix' software supposedly worked.

11:48:04

11 The evidence will show that that never happened.  
12 SRM, again Supplier Relationship Management software, it was an  
13 SAP product. But that software does not do what Wellogix'  
14 software does, and it never did and it doesn't today. A simple  
15 look at how SRM works would show this.

11:48:32

16 It does not have any dynamic templates like  
17 Wellogix. It has the same capabilities relating to Field Ticket  
18 and electronic invoicing that it always had. Nothing new that  
19 took anything from Wellogix. And a comparison of SAP SRM code  
20 to Wellogix' code shows that they did not -- one did not copy  
21 the other. Simply put, SRM doesn't do what Wellogix' software  
22 did. And to the extent there are any similarities, those  
23 similarities long predated Wellogix' software.

11:48:55

24 Now, Wellogix will have a technology witness  
25 testify in this case. When you hear his testimony, consider the

11:49:18

1 following evidence: He's a professional testifier. He's got no  
2 SAP experience. He's got no oil and gas experience. And he's  
3 got no experience whatsoever with complex services.

4 We will also have a technology witness testify in  
11:49:39 5 this case. His name is Deon Smith. Mr. Smith has extensive  
6 experience with SAP, and his job to this very day is to  
7 implement software for energy companies.

8 He will testify that SAP's software does not do  
9 what Wellogix' software does. SAP's capabilities related to  
11:50:01 10 complex services have never changed. They're no different than  
11 they ever were. They did not copy Wellogix' software.

12 And even if SRM did -- let's go into a  
13 hypothetical world, one I, obviously, don't agree with, that  
14 indicated somehow SRM -- SAP's SRM code copied or did the same  
11:50:28 15 thing that Wellogix' code did. There is no evidence -- in fact,  
16 the evidence will show just the opposite. Accenture did not  
17 show Wellogix' code or any of its trade secrets to SAP. SAP  
18 didn't get it from Accenture.

19 SAP got it directly from Wellogix. We never had  
11:50:53 20 the code, first and foremost. We never modified SAP's software.  
21 In fact, we didn't have access to SAP's code just like we didn't  
22 have access to Wellogix' code. It makes no sense that we would  
23 do so. And the whole argument makes no sense because Wellogix  
24 admits that it gave to SAP all of its trade secrets and access  
11:51:19 25 to its software code, let SAP look at it.

1           The admissions of Wellogix in this case that you  
2 will hear are the following: It gave its software code to SAP  
3 but not to Accenture. It did not disclose anything to Accenture  
4 that it did not directly and repeatedly disclose to SAP. And  
11:51:45 5 their own technology witness will testify that it is fair to  
6 conclude that to the extent any Wellogix' source code was  
7 misappropriated by SAP, that could have been the result of SAP's  
8 access to Wellogix' source code completely independent of  
9 Accenture.

11:52:04 10           In fact, Wellogix claims that SAP did just that.  
11 Wellogix claims that SAP stole its trade secrets, stole its  
12 code, used its code, copied its code, and modified SRM with that  
13 very code. That's Wellogix' claim. They claim SAP did it. Of  
14 course, they claim others did it, as well.

11:52:32 15           Finally, Accenture had no reason to give  
16 Wellogix' code to SAP. Accenture makes its money through  
17 implementations. The more complex an implementation is, the  
18 more money we make. And to the extent Wellogix and SAP are both  
19 part of a implementation, the implementation is more complex and  
11:52:56 20 we make more money.

21           There was no advantage to us to eliminating  
22 Wellogix. The advantage was just the opposite. To the extent  
23 Wellogix was there, we make more money through our  
24 implementation process.

11:53:10 25           Now, you've heard and you've already heard that

1 we're really tight with SAP, that we are partners with SAP, that  
2 we implement more SAP software than any other consulting firm in  
3 the world. That's true. That's true. We're proud of it,  
4 frankly. That's what makes us successful. And the reason we do  
5 more SAP code implementations than anyone in the world is  
6 because we're good at it.

7           We don't work for SAP, we work for our customers.  
8 Our customers select us to implement SAP code. They pay us  
9 handsomely for it. They value that relationship we have with  
10 SAP. They value our knowledge of SAP, and that's why they  
11 repeatedly select us to implement SAP software.

12           But make no mistake about it, there's more  
13 partners for SAP than just us. In fact, there's one right here.  
14 Wellogix was an SAP partner. They held themselves out to  
15 anybody who would listen that they were a partner of Wellogix.  
16 They know that relationship -- excuse me, that Wellogix held  
17 itself out to anyone who would listen that they were a partner  
18 of SAP's.

19           They know how important that relationship is in  
20 the marketplace. They had frequent meetings with SAP. They  
21 visited German and SAP on numerous occasions. They tried to get  
22 SAP to buy them or, at least, to invest in them; and they had  
23 numerous agreements with SAP. So there's nothing wrong with  
24 being an SAP partner. Wellogix itself held themselves out as an  
25 SAP partner.

1 One last subject, ladies and gentlemen, and then  
2 we'll move on to the evidence. As I already mentioned, Wellogix  
3 was a startup company who had a product that they hoped to sell  
4 in the marketplace and that, ultimately, the oil and gas  
5 industry decided they didn't want to buy.

6 They were focused on a very small market: large  
7 oil and gas companies. Although they identified a need in the  
8 oil and gas industry and they designed and developed some  
9 software in hopes of filling that need and making money, the  
10 industry ultimately decided not to adopt it.

11 Sure, there were people that liked it. There  
12 were people at BP that liked their software. There were people  
13 at Accenture that liked their software. In fact, Accenture  
14 tried to help Wellogix in promoting their software to the  
15 industry. So you're going to see documents and we're not going  
16 to dispute that their idea -- their software, their software was  
17 something that had potential in the marketplace.

18 But Wellogix wasn't the only game in town. There  
19 was competition from companies like Digital Oil Field, another  
20 company called Ariba, another company called Quadrem; and there  
21 are more on the list. These competition -- this competition  
22 provided software that was simpler to use and that was used more  
23 readily by the industry than Wellogix.

24 And trying as hard as it did, Wellogix just had  
25 trouble gaining any traction in the marketplace. They only ever

1 had three real paying customers: BP, Marathon, and Forest Oil.  
2 With respect to all three of those customers, the projects that  
3 they did with them were limited projects.

4           They only used some parts of Wellogix' software  
11:57:06 5 and none -- none of those three companies uses Wellogix'  
6 software today. They all made decisions not to use Wellogix'  
7 software; and in some cases, like Forest Oil, for example, they  
8 decided to go with a competitor of Wellogix, Digital Oil Field  
9 instead.

11:57:25 10           As a startup company, Wellogix experienced the  
11 problems that many startup companies do. They had lots of  
12 management turnover before Mr. Epley got control of the ship.  
13 But even after he took control, they had turnover with respect  
14 to their technology personnel.

11:57:44 15           They were always financially stressed. They  
16 spent money faster than they could raise it. I'm not  
17 criticizing them for this. It's just the reality of a startup  
18 company, and it was a concern of companies to consider whether  
19 or not to do business with them.

11:58:02 20           They also experienced delays and cost overruns  
21 with respect to their software development. In the 2005, 2006  
22 time period, it was important that Wellogix upgrade its software  
23 to a newer generation in order for it to be able to work with  
24 the other existing products out there and in hopes that it would  
11:58:22 25 gain additional traction in the marketplace.

1 That development project experienced significant  
2 delays and cost a lot more than they planned on, and maybe it  
3 was because of these problems or maybe it was because of  
4 something else I'll talk about in a minute energy companies just  
11:58:40 5 decided they didn't want to use Wellogix' software.

6 They were, according to them, ahead of their  
7 time. Wellogix says that. They also say and they admit that  
8 energy companies are very resistant to change. They like to do  
9 things the way they've always done them, even when they use new  
11:59:03 10 technology to do it.

11 And also, suppliers like Halliburton and  
12 Schlumberger and others who were an integral part of this  
13 process that Wellogix was trying to implement through its  
14 software resisted it, as well. They didn't want to participate;  
11:59:23 15 and if they didn't participate, the value proposition for  
16 customers was very limited.

17 Wellogix was not as successful as they hoped to  
18 be. Most startup companies, frankly, aren't; and that's the  
19 case even if they got some software that's special to them.

11:59:44 20 THE COURT: Ten minutes, Mr. Voyles.

21 MR. VOYLES: I'll take two, your Honor. Thank you.

22 THE COURT: Okay.

23 MR. VOYLES: Just because a company has financial  
24 problems and is unsuccessful in the marketplace doesn't mean  
11:59:54 25 that somebody did something wrong, and it certainly doesn't mean

1 that the employees at Accenture stole Wellogix' trade secrets.  
2 The evidence will show they had no reason to do that.

3 So thanks for listening to me this morning. I  
4 want you to keep those five key facts in mind as you're  
12:00:15 5 listening to the evidence. Remember the first one pure and  
6 simple: Accenture did not steal anything or misuse anything  
7 that belonged to Wellogix. It simple didn't happen.

8 Thank you.

9 THE COURT: Thank you, Mr. Voyles.

12:00:38 10 Thank you, Mr. Pirtle.

11 Thank you, both.

12 Do we have the first witness ready to go?

13 MR. LAMINACK: We do, your Honor.

14 THE COURT: Ladies and gentlemen, we can break for  
12:00:48 15 lunch whenever you want. I guess my preference is to get a  
16 little more -- a little farther down the road. Can you ride  
17 with us a little longer?

18 THE JURY: (Indicated yes.)

19 THE COURT: Okay. Very well.

12:01:00 20 You may call your first witness.

21 MR. LAMINACK: Would you like to leave the podium  
22 there or move it?

23 THE COURT: We'll a full service. Wherever you want.

24 MR. LAMINACK: That's fine, your Honor.

12:01:51 25 THE COURT: Okay. Ladies and gentlemen, just to



Epley - Direct/Laminack

1 remind you, we have some of the best lawyers in the country  
2 working in this trial; and what you've heard up to date -- up to  
3 this moment, I hope, has been useful to you; but it's not been  
4 evidence. Everybody understand that, it's not evidence? The  
5 evidence will start right now.

12:02:06

6 MR. LAMINACK: Your Honor, Wellogix would call  
7 Mr. Ike Epley.

8 THE COURT: Mr. Epley, you know to the drill probably.  
9 Mrs. Loewe will administer the oath.

12:02:19

10 (The witness, **IKE EPLEY**, called on behalf of the Plaintiff,  
11 was sworn.)

12 THE COURT: Please try to speak directly into the  
13 microphone and adjust it as appropriate to help you do that.

14 DIRECT EXAMINATION

12:02:29

15 BY MR. LAMINACK:

16 Q Good afternoon. Mr. Epley, would you introduce yourself to  
17 the folks on the jury.

18 A My name is Ike Epley. I live here in Houston, Texas.

19 Q I want the jury to know a little bit about who you are and  
20 who a man named John Chisolm is. Now, you're currently CEO of  
21 Wellogix; is that correct?

12:03:06

22 A I am, yes.

23 Q Have been for sometime?

24 A Since 2002.

12:03:17

25 Q Okay. Tell the jury just a little bit about where you grew

Epley - Direct/Laminack

1 up and what your education is.

2 **A** I grew up here in Houston, went to high school here, went  
3 to the University of Texas, Hendrix College and the University  
4 of Houston.

12:03:31

5 After that, I worked as an investment banker and  
6 then for a private equity firm investing in mainly oil and gas  
7 service businesses and then met John Chisolm through that  
8 relationship.

12:03:53

9 We had -- our company owned a case tool wireline  
10 company, which is an oil field service company. John -- back  
11 up. John had started a company called ProTechnics --

12 **Q** This is John Chisolm?

12:04:14

13 **A** John Chisolm, I'm sorry. -- in the '70s. He was actually  
14 drafted as an NFL quarterback, played one year with the  
15 Philadelphia Eagles and moved back to Colorado and started a  
16 wire -- started a company that they put radioactive tracers down  
17 a well bore to see the -- to be able to see where the zones were  
18 and the stimulation zones were called Protechnics which he  
19 started out of the back of his pickup truck.

12:04:34

20 He sold that company in 1995, I believe. They  
21 had 150 employees in ten different countries. He sold that  
22 business to Core Laboratories which is another oil field service  
23 company. I met him. He came in and ran our logging company,  
24 and we ended up selling that to Superior Energy which is another

12:05:01

25 oil field service company. During that relationship --

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1 Q Let me stop you there a minute before you get into the next  
2 phase.

3 A Okay.

12:05:11

4 Q You talked about you lived here in Houston. About your  
5 family, have they been here a long time?

12:05:34

6 A My grandfather was from Mississippi. He started an oil  
7 field service company which was actually a mud business in  
8 Louisiana. He moved to Houston when my mother was 14. And so  
9 she grew up here from -- well, from Lake Charles, Louisiana,  
10 until she was 14 and then here.

12:05:54

11 My father was from Arkansas. He went to Rice and  
12 got his Masters in Electrical Engineering here at Rice. Met my  
13 mother. His father actually was in the seismic business which  
14 is another oil field service business that traveled around  
15 throughout Texas and the country. And he -- so -- and I've  
16 lived here my -- I was born here and raised here.

17 Q Okay. You were here when Mr. Pirtle talked a little bit  
18 about what happened to Wellogix during opening statement?

19 A Yes, sir.

12:06:12

20 Q Is some of your family invested in Wellogix?

21 A Yes. My family and me personally have invested in  
22 Wellogix. Together with John Chisolm and I have invested  
23 probably close to \$4 million in Wellogix.

12:06:46

24 Q And I believe December of '06, you had to let most of your  
25 employees go?

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1 MR. VOYLES: Objection, your Honor. Leading.

2 THE COURT: Just rephrase the question.

3 BY MR. LAMINACK:

12:06:57

4 Q Refresh our memories on what happened in December of '06 at  
5 Wellogix.

12:07:20

6 A In December of '06, we -- I realized we weren't going to be  
7 able to make payroll. We -- I had to -- I remember like it was  
8 yesterday. I had to lay off 90 percent of my employees, many of  
9 whom had been there since the beginning. And it was the single  
10 most difficult thing I've ever had to do.

11 Q Let's talk for a minute now about -- you and John Chisolm  
12 were the founders of Wellogix?

13 A Yes.

12:07:38

14 Q How did that come about? Before we do that, let me ask you  
15 something: There were other people involved in Wellogix also,  
16 correct?

17 A Yes, sir.

18 Q And who were some of those people?

12:08:02

19 A The original idea was really John's. I was -- John and --  
20 Zeke Zeringue was John's -- the three of us were the founders of  
21 actually Intersection which is the name of -- was our company.  
22 And Zeke had retired from Halliburton. He had worked for  
23 Halliburton for 20-something years.

12:08:24

24 His last job was he was president of Halliburton  
25 Energy Services worldwide. He ran Halliburton Energy globally

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1 for -- when Dick Cheney was the CEO of Halliburton. And he was  
2 an engineer -- a petroleum engineer, I believe. Started on a  
3 log -- I mean, on a cement truck in his first job out of college  
4 and worked his way all the way up through Halliburton. He  
5 retired from Halliburton.

12:08:50

6 **Q** Who were some of the other people?

7 **A** On our original board with -- was a man named Chad Deeton.  
8 Chad had retired from Schlumberger. His current job is he is  
9 the chairman/CEO of Baker Hughes which is the third largest oil  
10 field service company in the world.

12:09:06

11 Clara Farley had been the president of Texaco  
12 USA.

13 Rich Pattarozi was the president of Shell Deep  
14 Water. He was in charge of the entire -- all deep water  
15 drilling for Shell globally.

12:09:23

16 **Q** Okay. So those are the people that kind of formed the  
17 nucleus of Wellogix?

18 **A** Yes, sir.

19 **Q** Okay. The jury's heard a lot about a term called complex  
20 services. From the witness stand, can you explain to the jury  
21 and to me what that means in terms of the oil field and  
22 planning, paying for, acquiring services?

12:09:49

23 **A** Well, in drilling an oil and gas well, it's very  
24 complicated because you have various factors that change. So  
25 the geology can change, the geography can change. Government

12:10:15

Epley - Direct/Laminack

1 regulations are different in other places. And the services  
2 that are provided to go and drill that well, 75 to 80 percent of  
3 those are called complex services which make up the most  
4 complicated part of drilling the well.

12:10:36 5 So it's along the lines of cementing the casing  
6 into the well, drilling the well, doing the wireline which is  
7 seeing what the formations are. All of these services take --  
8 are dynamic in nature.

9 Q Why do they call something like buying cement complex? Why  
12:10:58 10 is that a complex services?

11 A Because as they go and put casing in the well and have to  
12 cement that into the well, they don't necessarily know how many  
13 sacks of cement it's going to take, what kind of cement it's  
14 going to take, whether the -- what the pressure is down hole,  
12:11:19 15 what the temperatures are. All of that can change as they're  
16 going.

17 So they could have a plan for using 50,000 sacks  
18 of cement down a well; and then, all of a sudden, they get to  
19 depth and something changes. The pressure is more. It's --  
12:11:39 20 there are kicks -- or gas kicks that come up that cause it not  
21 to harden. So they have to go change and add things to it to  
22 make the cement harden down hole.

23 Q So help us understand why planning and procuring and paying  
24 for things like cement and other complex services, why was that  
12:12:06 25 such a problem?

Epley - Direct/Laminack

1 **A** Well, because --

2 **Q** Or what problems did that create?

3 **A** Well, it -- they never knew what -- typically -- and I  
4 would say the -- 90-plus percent of the wells are not exactly as  
12:12:22 5 you had planned because of all the things that can change. So  
6 in planning that, they don't really -- they don't really have a  
7 perfect plan. And so it creates a lot of issues as these things  
8 change and they have to add products or goods or different  
9 services to the mix.

12:12:43 10 So the planning for it was complicated. The  
11 actual when they used the services was -- and how much they used  
12 was dynamic in nature; and then it created a problem -- it  
13 created a problem when they went to go pay for it because, in an  
14 example of being on a well with the cementing issue, they may  
12:13:10 15 have planned, as I said, for 50,000 sacks of cement to be used.

16 They get down hole. They realize they're having  
17 a loss of circulation which means the cement is not hardening.  
18 They need to act and they need to act right then. They'll have  
19 a company engineer on site from BP or Shell or whichever company  
12:13:35 20 is drilling the well, and they'll also have the service provider  
21 engineer, in this case, Halliburton engineer, on site; and  
22 they'll come up with a plan to add 20,000 more sacks and add XYZ  
23 sauce and ABC sauce and make it harden.

24 So what would happen would be the engineer would  
12:13:56 25 say here's what we should do and they would agree on it, sign a

Epley - Direct/Laminack

1 piece of paper. Halliburton would then take the cement off the  
2 truck and pump it down and, hopefully, they would solve the  
3 problems.

4 Well, that created a huge issue in the back  
12:14:10 5 offices of these companies because what would then happen is  
6 they'd have a piece of paper and there may be -- a piece of  
7 paper from the well site that would then go back to the office  
8 at Halliburton. They would then turn that into an invoice, send  
9 it to BP, for example; and it would be different than what was  
12:14:30 10 the actual plan.

11 And this process would take, you know, 30 to 45  
12 days before it came through the system; and then it would be  
13 stuck on the engineer's desk in Houston wondering why the bill  
14 was more than what they had planned for. Now, they don't just  
12:14:48 15 drill one well. They drill -- are drilling wells all over the  
16 place every day, and the reconciliation part of the engineer  
17 saying, okay, I remember I did that to approving it was a long  
18 process, and it caused a lot of time and effort from the  
19 engineer's standpoint and the time that the engineers were  
12:15:09 20 spending which was really reconciling invoices rather than doing  
21 the engineering work that they're paid to do.

22 Q I've heard estimates about the time that's spent or the  
23 money it costs to reconcile a typical complex service invoice.  
24 That's the kind of thing that Wellogix was trying to address?

12:15:33 25 A Yes. And I think that the data is that it costs typically



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1 around 70 to \$75 per invoice to reconcile before Wellogix and  
2 \$12 after Wellogix. And the number of invoices is in the  
3 millions. There are actually billions of spin that go through  
4 -- that these oil companies spend on complex services a year.

12:16:01

5 So the problem is -- it's a big -- you know, it's  
6 a small piece as -- it was said that complex services is just a  
7 small piece but it was actually the biggest piece.

8 Q So we're talking billions of dollars spent on complex  
9 services each year by oil companies?

12:16:34

10 A Annually, yes, sir.

11 Q And so even a modest saving on each one of those services  
12 or invoice, would that add up to --

13 A Hundreds of millions of dollars.

14 Q And before Wellogix coming along, how were those -- buying  
15 and paying for it and all that, how was that handled and  
16 accounted for?

12:16:59

17 A Basically, paper. It was handled on paper via Powerpoints  
18 and meetings and sales guys and selling -- bringing doughnuts to  
19 the BP offices and building plans on paper and then negotiating  
20 those, and then it was all a paper process.

12:17:21

21 Q Okay. Let's talk about Wellogix. From its beginning, did  
22 Wellogix have a motto or a creed?

23 A Making the complex simple.

24 Q Making the complex simple. Did Wellogix' focus ever change  
25 during its entire life?

12:17:45

Epley - Direct/Laminack

1 **A** No, sir. Always on complex services.

2 **Q** Okay. You had told the jury a little bit about who you  
3 were and who John Chisolm were, kind of where you-all came from.  
4 Now, bring us up to the Wellogix. How did Wellogix get going?

12:18:01 5 **A** We --

6 **Q** You said it was a merger of two companies?

7 **A** It was a merger of two companies, Intersection and a  
8 company called WellBid out of Denver. So we were, basically,  
9 oil and gas guys and financial guys. WellBid was a company that  
12:18:20 10 was -- started a little -- right about the same time that we  
11 did; and they were technology guys, ex-- or software developers  
12 and engineers in Denver, Colorado -- or based in Denver. I  
13 think they had a small office here.

14 So it was at the -- at the idea of a financial  
12:18:39 15 partner who became our largest investor, which was Beacon Energy  
16 Group, thought it was the right thing to put the two companies  
17 together to create Wellogix. He was going to need a large  
18 financing to do that and we agreed, and we raised \$26 million in  
19 August of 2000.

12:19:03 20 **Q** Okay. So you began with 26 million?

21 **A** Well, we had raised four -- like, four million at  
22 Intersection which was a dead instrument that rolled into the  
23 26. So around \$30 million.

24 **Q** Did you hire people, technicians?

12:19:26 25 **A** Yes. We had software engineers and software architects and

Epley - Direct/Laminack

1 hired -- yes, hired additional people.

2 **Q** What did these folks do?

3 **A** They designed and they built the -- basically, the  
4 Wellogix' software suite over time.

12:19:47 5 **Q** Okay. We heard a little bit about during opening  
6 statements that like any startup company you experienced  
7 problems. One question I wanted to ask: Did the focus of what  
8 Wellogix was doing ever change?

9 **A** No. Never changed.

12:20:05 10 **Q** What was the focus?

11 **A** The focus was to build a -- create a solution for the  
12 complex services problems in the upstream oil and gas industry.

13 **Q** Now, a couple of other terms we need to -- Mr. Pirtle  
14 talked a little bit about E&P and I think it was R&M. What do  
15 those mean?  
12:20:28

16 **A** E&P is exploration and production which is --

17 **Q** And what is R&M?

18 **A** And R&M is refining and marketing which is downstream. So  
19 it's the refineries and then putting the gas in your car.

12:20:42 20 **Q** So R&M is downstream?

21 **A** Right.

22 **Q** E&P?

23 **A** E&P is upstream.

24 **Q** E&P is upstream.

12:20:52 25 E&P, is this where the complex services are?

Epley - Direct/Laminack

1 **A** Yes. There can be complex services in R&M, as well; but  
2 our focus was really on the upstream.

3 **Q** Okay. Just to get this out of the way, you're a startup  
4 company, you had growing pains?

12:21:12 5 **A** Yes. We were a merger of two companies. We had -- we had  
6 control issues between our management and their management.

7 **Q** Okay. Did those get worked out?

8 **A** Yes. By 2002, they had all been worked out.

9 **Q** And has the company been managed by the same people in the  
12:21:34 10 same position since 2002?

11 **A** Yes. Yes.

12 **Q** Okay. I think we've already heard how smart and  
13 sophisticated you-all are several times.

14 **A** That was a compliment.

12:21:51 15 **Q** That was one thing I think we all agree on, don't we?

16 **A** I think so.

17 **Q** We also heard that from time to time you had money problems  
18 like any startup company. Is that true?

19 **A** Yes. We invested a lot of money in building our solution  
12:22:16 20 and into our trade secrets.

21 **Q** By the way, where did that \$30 million go?

22 **A** It went all into building the business and designing and  
23 building the trade secrets and confidential information that are  
24 the core asset of a software company.

12:22:35 25 **Q** Did it have exorbitant executive salaries?

Epley - Direct/Laminack

1 **A** No.

2 **Q** Or fancy cars or anything like that?

3 **A** No.

4 **Q** Company cars?

12:22:41

5 **A** No.

6 **Q** Let me put something else on there. Trade secrets. I know  
7 you're not the technical person. The jury is going to hear from  
8 a technical person. But in your own words, explain to the jury  
9 what Wellogix trade secrets were?

12:23:20

10 **A** Our trade secrets are made up of our products and how our  
11 products did things. So we were -- we had a -- made up of  
12 several products between eField Ticket, work flow navigator, our  
13 DynaMaps that have been talked about, and the functionality of  
14 the software.

12:23:45

15 And so in each of those products, there are trade  
16 secrets behind them that -- that show -- or that determine how  
17 things are done. So all of the steps that it takes to buy a  
18 service or change a service or change a ticket, the logic behind  
19 it, along with our architecture and our product maps, design  
20 features, and the -- all encompassing, as well as our object  
21 code and our source code.

12:24:17

22 **Q** This is all part of software programs?

23 **A** Yes.

24 **Q** Designed to do what?

12:24:32

25 **A** Designed to be able to plan, procure, and pay for complex

Epley - Direct/Laminack

1 services.

2 **Q** Okay. Did you have something unique?

3 **A** Yes, we did.

4 **Q** Did anybody have what Wellogix had?

12:24:49

5 **A** No.

6 **Q** Now, to help the jury understand, do these big oil

7 companies have big computer programs that run most of their

8 accounting features?

9 **A** Yes, they do.

12:25:08

10 **Q** Is that any -- did Wellogix do anything like that or --

11 **A** No.

12 **Q** -- where was Wellogix?

13 **A** No. We were a point solution focused around complex

14 services.

12:25:20

15 **Q** And what was the relationship between the company's main  
16 accounting software and the Wellogix piece?

17 **A** We would touch their accounting system. So we would have  
18 integration points within -- within their accounting system.

19 **Q** How did that work? So the information could flow through?

12:25:45

20 **A** The information could go -- you go from Wellogix into their  
21 accounting back to Wellogix back to the service providers.

22 **Q** Okay. The jury is going to see -- I mean, I think they've  
23 already seen some documents that -- eField Ticket. You  
24 mentioned something else, work flow navigator?

12:26:08

25 **A** Work flow navigator, yes. DynaMaps.

Epley - Direct/Laminack

1 Q Was that these --

2 A Dynamic templates.

3 Q Just to make sure we're clear, this is not your typical  
4 template, is it?

12:26:32 5 A No.

6 Q We're going to talk more about the templates in a minute.  
7 And then I've seen a term called CSM.

8 A CSM is a complex services management suite, and it was  
9 encompassing of all -- of all those different products.

12:27:05 10 Q Was it your belief and the folks at Wellogix belief that  
11 you had created something special?

12 A Absolutely.

13 Q Something unique?

14 A Absolutely.

12:27:16 15 Q Was protecting the trade secrets behind your product --  
16 your products important to Wellogix?

17 A It was critical to Wellogix.

18 Q And explain to the jury why your trade secrets were so  
19 important.

12:27:33 20 A Because they are the core asset of the software company. I  
21 mean, the one thing we have is our software products. And  
22 behind that is the trade secrets. So if we don't keep that  
23 confidential, then we would have nothing. So it was the most  
24 critical thing to us, was keeping our trade secrets

12:27:58 25 confidential.

Epley - Direct/Laminack

1 Q What steps did you take at Wellogix -- did Wellogix take to  
2 protect its trade secrets?

3 A We had confidentiality agreements with people that -- any  
4 time we would have an exposure to our trade secrets, we would  
12:28:15 5 have confidentiality agreements with the companies. To think  
6 that we showed our trade secrets to a lot of different companies  
7 without them is not true.

8 We did have demos and presentations that would  
9 show what our software did, not how it did it; and I would say  
12:28:36 10 what it did and then the sales presentations were -- were not  
11 trade secrets.

12 Q Okay. Would you get confidentiality agreements signed, for  
13 example, when you went out and actually piloted the software?

14 A Yes. We would always have an agreement in place.

12:28:55 15 Q When you delivered software, would you get confidentiality  
16 agreements?

17 A Yes.

18 Q We heard a little bit about partnering with different  
19 companies like Accenture and SAP. Were those partnership  
12:29:06 20 arrangements covered by confidentiality agreements?

21 A Yes, they were.

22 Q When investors would come and -- that were considering  
23 investing in Wellogix and they would kind of want to look under  
24 the hood, did you get confidentiality agreements?

12:29:21 25 A Yes, we did.



Epley - Direct/Laminack

1 Q Okay. I think this is obvious. But for a little startup  
2 company like Wellogix, what would happen if its trade secrets  
3 were revealed to people in this industry?

12:29:46

4 A Well, more than likely, we would be out of business, be put  
5 out of business.

6 Q And help me understand why that is.

12:30:04

7 A Well, because if we gave up our trade secrets to -- without  
8 any -- without a confidentiality agreement or if we disclosed  
9 our trade secrets to companies that could go build it and were  
10 larger than we were and had financial stability much more so  
11 than us, then there would be no point for the customers to buy  
12 Wellogix' software.

12:30:33

13 Q I'm going to look at some of these in a minute. But tell  
14 the jury how many confidentiality agreements you had with just  
15 Accenture.

16 A At least six.

12:31:00

17 Q I want to talk a minute about the state of a software  
18 company in the oil and gas business back in the 2000 to 2005  
19 time frame. Are you with me?

20 A Yes, sir.

21 Q All right. First of all, did anyone else have Wellogix'  
22 complex services solution?

23 A No.

24 Q Or anything like it?

12:31:23

25 A No, sir.

Epley - Direct/Laminack

1 Q Okay. We're going to look at some documents in a minute  
2 that prove that. Are you telling the jury that you had no real  
3 rival as far as the product itself?

4 A I would say that that's true.

12:31:41 5 Q Okay. Now, the jury has been introduced to these folks.  
6 Explain who SAP is as far as the oil and gas -- the software  
7 business in the oil and gas industry is concerned.

8 A Well, SAP is the second largest software company in the  
9 world next to Microsoft. I believe they're larger than Oracle.  
12:32:07 10 It's either -- they're two or three right neck and neck.

11 Q Where are they located?

12 A Walldorf, Germany. They also have offices in the US, but  
13 their main headquarters is in Walldorf, Germany.

14 Q Give us a sense, if you could, in numbers or however you  
12:32:22 15 can, of their market penetration in the oil and gas industry.

16 A Well, it's been told to me that 95 --

17 MR. VOYLES: Objection, your Honor. Hearsay.

18 THE COURT: Okay. Something of your own knowledge,  
19 not something --

12:32:40 20 MR. LAMINACK: I'll ask it different.

21 BY MR. LAMINACK:

22 Q Being in this business and being partners with SAP, are you  
23 aware of how much of the world's oil and gas is accounted for  
24 running SAP software?

12:32:54 25 A 96 percent.

Epley - Direct/Laminack

1 Q So would it be fair to say that SAP is a huge player with  
2 respect to software -- accounting software in the oil and gas  
3 business?

4 A Yes.

12:33:10 5 Q They are the mamajama (phonetic spelling)?

6 A They are the biggest provider.

7 Q All right. Now, primarily with respect to oil and gas,  
8 what is it they provide?

9 A They're a -- their main function is a software -- is an  
12:33:29 10 accounting and financial system. So you may have seen the  
11 commercials, the best companies run SAP. They are mainly an  
12 accounting and -- their main core business is accounting and  
13 financial.

14 Q So at a typical SAP installation at an oil company, you  
12:33:54 15 would find their main accounting software running SAP?

16 A Yes.

17 Q Okay.

18 A In all the majors, the super majors, the large oil  
19 companies, they all run SAP.

12:34:07 20 Q Now, does the SAP software 2000, 2005 -- 2000 to 2005 time  
21 frame, did it have a complex services solution?

22 A No, they did not.

23 Q Okay. And we've heard that referred to as a gap in their  
24 accounting software program. Do you -- is that what you call  
12:34:39 25 it?

Epley - Direct/Laminack

1 **A** Yes, sir.

2 **Q** Okay. Give the jury an idea, if I've got a big oil company  
3 and I'm running SAP at my oil company, what does that look like?  
4 Is there SAP people out there? Are there buildings? Kind of  
5 give us a visual, if you would.

12:34:58

6 **A** Well, there are -- they have SAP people. They have,  
7 typically, SAP consultants. They have their -- their systems  
8 integrators, typically, which would be the Accentures and IBMs.  
9 But there are -- they are huge installations. So they have  
10 numbers of people that are -- that their sole focus is working  
11 with SAP in all of these companies.

12:35:23

12 **Q** Is their main -- SAP's main job with respect to oil and gas  
13 software to provide the software? Is that their main function,  
14 they provide the software?

12:35:42

15 **A** Right. They provide the accounting, yes. They provide the  
16 accounting software, financial software.

17 **Q** Did SAP ever consider investing in or buying Wellogix?

18 **A** Yes.

19 **Q** Did they actually conduct due diligence at Wellogix?

12:36:00

20 **A** Yes, they did.

21 **Q** Did you get confidential agreements from them?

22 **A** Yes, we did.

23 **Q** We're going to look at some of those in a minute.

24 Did SAP ever consider partnering with Wellogix?

12:36:19

25 **A** Yes.

Epley - Direct/Laminack

1 Q We're going to talk more about that in a minute. Talking  
2 about the state of the software business, the oil and gas  
3 business, 2000, 2005 time frame. Help us understand who  
4 Accenture is.

12:36:34 5 A Accenture is the largest -- I believe they're the largest  
6 consulting company in the world.

7 Q Largest or second largest?

8 A They are systems integrator and --

9 Q Consultants?

12:36:48 10 A -- and consultants.

11 Q As a consultant, what do they do?

12 A They -- they have various projects with their clients.  
13 Probably Ms. Kostial can answer those quite better than me. But  
14 they -- they consult with their clients. They help their  
15 clients decide which software solutions to buy and implement  
16 those.

17 Q What I want the jury to get is kind of, once again, a  
18 visual. If a big company like BP were to hire Accenture to come  
19 do a consultant job for a big project, what would that look like  
12:37:06 20 at the BP places?

21 A Well, they would have Accenture people at BP. I think  
22 actually BP is Accenture -- one of Accenture's diamond clients,  
23 which means that they -- that they spend or account for a couple  
24 hundred million dollars a year in revenue. They would have  
12:37:50 25 Accenture people on site at BP. They have people on site at BP.

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1 Q And is the purpose of this consultant work to help do  
2 things like evaluate a company's needs --

3 A Yes.

4 Q -- software needs?

12:38:04

5 A Yes.

6 Q Help them decide which software to buy?

7 A Yes.

8 Q Okay. And then you mentioned they were -- what did you  
9 say?

12:38:13

10 A Systems integrators.

11 Q And what does that mean?

12 A That they actually implement the different software  
13 companies' products into the actual customer's.

14 Q What does that mean, they implement it?

12:38:31

15 A I think -- it's not like getting a disk from Microsoft to  
16 put Word in your computer. I think that it -- it's much more  
17 complicated than that.

18 Q So if a company was to, say, buy SAP's main accounting  
19 package and say, "We want to use SAP's main accounting package  
12:38:50 20 at my oil company," I don't want to just ship it in, open the  
21 box, and plug it in?

22 A No. Those companies would spend probably three times what  
23 they paid for the software to Accenture to go and make it all  
24 work at those companies.

12:39:10

25 Q And once again, give the jury an idea of what that would

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1 actually look like at a company. Would there be Accenture  
2 people located at the company?

3 **A** Oh, yes. There would be Accenture people on the project.  
4 There would be Accenture partners on the project. They would  
5 have software developers on the project.

6 **Q** Would they help --

7 **A** Determine -- put the functionality in and determine what  
8 the processes were to connect everything to and how it would go  
9 into those big oil companies. And it's not just oil companies.

10 They do it for all -- all industries.

11 **Q** Would they also train the people at BP or Texaco or  
12 Marathon --

13 **A** Yes.

14 **Q** -- on how to --

15 **A** Yes.

16 **Q** -- run the new software?

17 **A** Yes.

18 **Q** Okay. And I think you said this. Is Accenture the largest  
19 implementer of SAP software in the world?

20 **A** I believe that's true. It was at one point in time. I  
21 believe that's true today.

22 **Q** Does Accenture develop software itself? I know SAP is a  
23 big software developer. Does Accenture actually develop  
24 software?

25 **MR. VOYLES:** Objection, your Honor. Foundation.

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1 BY MR. LAMINACK:

2 **Q** Are you aware whether or not Accenture has ever been  
3 involved in software development?

4 MR. VOYLES: Same objection, your Honor. Foundation.

12:40:42 5 THE COURT: I'm going to allow it.

6 THE WITNESS: Yes. Accenture has software developers.  
7 They have software developers in Germany that work for  
8 Accenture. There's -- Accenture is on SAP's campus in Walldorf.  
9 And they have a development -- they have a development group in  
10 India that are software developers.

12:40:58

11 BY MR. LAMINACK:

12 **Q** And help us understand exactly what xIEP was.

13 **A** Well, xIEP was an SAP Accenture product that was, as you  
14 said, designed to make the SAP oil and gas experience easier to  
15 use.

12:41:19

16 **Q** And it was a joint development project between SAP and  
17 Accenture?

18 **A** SAP and Accenture, yes.

19 **Q** Did Accenture ever seek to invest in or buy Wellogix?

12:41:36

20 **A** Well, Accenture actually was an investor in Wellogix.  
21 Originally, in 2000, they invested, I think, \$3 million, in or  
22 around. They then sold their investment when they went public  
23 in 2002 or three. I actually don't really recall what date it  
24 was. But they sold all of their investments that they made  
25 in --

12:42:02



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1 Q As part of their public --

2 A Right.

3 Q -- requirements?

4 A Right. That was what they told us.

12:42:09 5 Q But early on, they made a sizeable investment in Wellogix?

6 A Yes.

7 Q Is that what you're telling the jury?

8 A \$3 million.

9 Q Okay. Did Accenture ever seek to partner --

12:42:20 10 A Yes.

11 Q -- with Wellogix?

12 A Yes.

13 Q Okay. And I want you to describe a little bit. I believe  
14 these partnerships were called teaming agreements?

12:42:34 15 A And some places, yes, they were. There were some teaming  
16 agreements.

17 Q Help the jury understand what an Accenture/Wellogix teaming  
18 partnership would be and what it would look like.

19 A Well, Accenture had -- has relationships with all of these  
12:42:52 20 large oil and gas companies, both on the public side, being the  
21 national oil companies such as Pemex and Petrobras, which are  
22 the national oil company of Mexico and the national oil company  
23 of Brazil, as well as BPs and Shells and Conocos and all the --  
24 basically, Accenture has relationships with all of those -- all  
12:43:13 25 of those companies.

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1 So we would partner with Accenture to go to those  
2 -- one of those companies under an agreement where they would --  
3 we would go in together to sell our software. They would be the  
4 implementation partner. They would get that work. We would get  
5 the software sale.

12:43:30

6 So that was what -- and then I would work with  
7 their partner, typically, on who was responsible for that  
8 account; and we would make presentations and go try to sell our  
9 software and their integration work at those -- at those  
10 accounts.

12:43:44

11 Q So they'd help you sell it. In return, they got the --

12 A Right.

13 Q -- implementation business?

14 A Right.

12:43:52

15 Q Before Accenture was willing to put its sterling reputation  
16 on the line and recommend Wellogix to one of its important  
17 customers, did it go and look under the hood and find out that  
18 you really had something that really worked?

19 A Yes.

12:44:10

20 Q Did they want to see in some cases how it worked?

21 A Yes.

22 Q They wanted to see some of the secret sauce before they  
23 would recommend you, right?

24 MR. VOYLES: Objection, your Honor. This is all  
25 leading.

12:44:22

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1 MR. LAMINACK: I'll rephrase, your Honor.

2 THE COURT: Rephrase it.

3 BY MR. LAMINACK:

4 Q Did they want to see it?

12:44:25 5 A Yes, sir.

6 Q And did you show it to them?

7 A Yes.

8 Q And did you have confidentiality agreements in place?

9 A Yes.

12:44:32 10 Q As well as these teaming agreements, did Accenture actually  
11 in some places implement Wellogix' software?

12 A Yes. They did at Marathon.

13 Q Okay. And kind of help the jury understand a little bit  
14 more detail. What's involved when Accenture comes and

12:44:55 15 implements your software?

16 MR. VOYLES: Objection, your Honor. Foundation. He  
17 has not established this witness has any knowledge of that.

18 THE COURT: What was your relationship with Accenture  
19 on the issue of implementation?

12:45:08 20 THE WITNESS: My -- I'm sorry, I don't --

21 THE COURT: Your connection. Your relationship with  
22 Accenture. Were you the lead -- were you the point person from  
23 Wellogix or not?

24 THE WITNESS: From a relationship standpoint, yes,  
12:45:20 25 sir, I was. Not from the actual integration -- not for the

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1 technology side of it, no.

2 THE COURT: Yeah. Would you give us just a brief  
3 survey of Accenture's role.

4 THE WITNESS: Well, Accenture was responsible for  
12:45:31 5 actually implementing the -- our software at Marathon where they  
6 would make sure that it hooked in with SAP.

7 BY MR. LAMINACK:

8 Q And on just a real high level, without going into the  
9 technology or anything, what would be involved when Accenture  
12:45:46 10 put your hardware in? Would they train the people on how to use  
11 it and things like that?

12 A Sorry. Yeah. They would make sure it worked, make sure it  
13 worked in the processes at the client, and then train those  
14 people on how to use it.

12:46:00 15 Q Did they do -- did they suggest some changes sometime to  
16 the look and feel of what showed up on the screen or things like  
17 that?

18 A Yes. In early -- at BP in the eServices piece, actually in  
19 regard to the templates, I think Mark Greene had suggestions on  
12:46:21 20 the cosmetic piece of what things looked like; and that was not  
21 unusual. Not the guts of it, how it did it, but what the user  
22 interface would look like and whether there were enough spaces  
23 and numbers and things like that.

24 Q Okay.

12:46:40 25 MR. LAMINACK: And I've got one final little thing

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1 before we go to lunch, your Honor, if you will.

2 BY MR. LAMINACK:

3 **Q** We talked about xIEP. I want to give the jury a little bit  
4 better understanding of what was involved in xIEP and what  
5 Wellogix' role was envisioned to be. We heard a little bit  
6 about that from their lawyer. Can you help the jury understand  
7 that.

8 **A** Well, xIEP was -- as I said, it was an SAP and Accenture  
9 project -- program. They were developing software. Our -- the  
10 role -- the complex services was -- at that time and actually  
11 all the time, complex services is, as I said, a very important  
12 piece of the puzzle.

13 And so we were trying to, of course, be the  
14 complex services solution. We had a partnership with SAP at  
15 this point in time where we were going to be a gap solution. I  
16 had numerous meetings with Accenture in pushing that actually,  
17 and I did go and attend a couple of meetings with their customer  
18 counsel and talked about Wellogix. That was the intention  
19 originally, was for Wellogix to be a part of xIEP.

20 **Q** So they were going to develop something that handled  
21 complex services and you-all were going to be involved in it?

22 **A** Right. That's what we believed.

23 **Q** And up until this point in time, did Accenture or SAP have  
24 a complex services program or solution?

25 **A** No.

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1 Q Okay. That's why they needed you-all?

2 A Right.

3 Q By the way, who is Tom Gee at Marathon?

4 A Tom Gee was in charge of the implementation project at  
12:48:37 5 Marathon for Accenture. He was an Accenture employee that  
6 worked on the Wellogix to Marathon SAP implementation.

7 Q Marathon is one of those places where your software was at  
8 and Accenture was doing the implementation?

9 A Yes.

12:49:03 10 Q And Tom Gee was an Accenture guy?

11 A Yes.

12 Q Okay.

13 THE COURT: Is this the time for a lunch break?

14 MR. LAMINACK: Yes, your Honor.

12:49:12 15 THE COURT: Okay. This is the first lunch break. It  
16 will take you a little while to find places to eat. Would you  
17 like an hour today? We generally do 45 minutes. Who would like  
18 an hour?

19 (No response.)

12:49:23 20 THE COURT: Who would like 45 minutes?

21 THE JURY: (Several responses.)

22 THE COURT: Okay, all right. We'll see you back here  
23 at 1:35.

24 (Court recessed at 12:50 p.m.)

25

## C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter, to  
the best of my ability.

By: /s/ Gayle L. Dye05-10-2011

Gayle L. Dye, CSR, RDR, CRR

Date